

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1633 OF 2015**

Shams@Sahil Shah Alam Shaikh

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.D.B.Shukla, for the Applicant

Mr.S.H.Yadav, A.P.P for the Respondent-State

API – Arvind H. Chougule, Vanrai Police Station.

CORAM : REVATI MOHITE DERE, J.

DATE : 5th OCTOBER, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 24 of 2015, registered with the Vanrai Police Station, Mumbai, for the alleged offences punishable under Sections 363, 376 of the Indian Penal Code and under Section 3, 4, 6 and 7 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicants states that the prosecutrix has lodged the aforesaid complaint on 21st January, 2015. He submits that a perusal of the said complaint, shows that the applicant and the prosecutrix had become friendly and that the prosecutrix had contacted the applicant on his mobile phone, after a chit was thrown by the applicant giving his mobile number. He submitted that the prosecutrix on her own accord had gone to the house of the applicant and stayed overnight. He submitted that although the prosecutrix has alleged that the applicant committed forcible sexual intercourse with her, it appears that the same was with her consent. He submitted that the date of birth of the prosecutrix is 15th April, 1998, as is reflected in the Birth Certificate issued by the Municipal Corporation of Greater Bombay and thus the prosecutrix was not 14 years of age but 17 years old at the relevant time. According to learned counsel, prosecutrix has alleged that she had physical relations with the applicant as he had assured to marry her.

4. Learned APP submits that considering that the prosecutrix was a minor, consent of the prosecutrix was immaterial.

5. Perused the charge-sheet, in particular the statement of the prosecutrix. The prosecutrix has stated that one week prior to the incident, the applicant had thrown a chit at her, at the railway station and had given his mobile number to her ; that thereafter she contacted the applicant on his mobile and went to meet the applicant ; that the applicant took the prosecutrix to his home where he had physical relations with the prosecutrix, allegedly without her consent ; that she stayed overnight at the house of the applicant ; and the applicant is stated to have dropped her back home. Perused the history given by the prosecutrix to the Doctor who examined her. The said history reads :-

“H/o Knowing a person (Sahil 20 years). They met in the train, 1 week back and became friends. On 20/1/15, she called him. He asked her to come to Goregaon Depot. From there A 6 p.m, he took her to his house. There was nobody in the house. They had dinner at 12 MN and then alleged H/o sexual intercourse without her consent. (penovaginal once and anal intercourse thrice).

On 21/1/15 morning, he dropped her to her house.”

6. Although, the prosecutrix has given her age to be 14 years, her Birth Certificate issued by the Municipal Corporation shows her date of birth as 15th April, 1998 i.e. 17 years.

7. No doubt, consent of the prosecutrix is immaterial, as she was a minor. However, considering the peculiar facts of the case ; the fact that investigation is complete and charge-sheet is filed and the fact that the applicant has no antecedents, the Applicant is enlarged on bail on the following terms and conditions :- :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- (iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the

case ;

(iv) The applicant shall not enter the jurisdiction of the Dindoshi Police Station, except for attending the legal proceedings.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/order.
