

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1820 OF 2015

Akbar Ali Asagar Ali Khan .Applicant

v/s.

The State of Maharashtra .Respondent

Mr.S.B.Patil, Advocate, for the Applicant
Ms Veera Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 17.10.2015

P.C.

. Heard learned counsel for the applicant
and the learned APP for the respondent – State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R.No.I-82 of 2015 registered with the Central Police Station, Ulhasnagar, for the alleged offences punishable under Sections 363, 376 r/w.34 of the Indian Penal Code and under Sections 3 & 4 of the Protection of Children

from Sexual Offences Act (For short "POCSO" Act).

3. The complainant is the mother of the prosecutrix. According to the complainant, her daughter was kidnapped and hence, she lodged a complaint which was registered as aforesaid. Subsequently, after the statement of the prosecutrix was recorded, Section 376 of the Indian Penal Code and Sections 3 & 4 of the POCSO Act came to be added.

4. Learned counsel for the applicant submits that a perusal of the statement of the prosecutrix will show that at the relevant time the prosecutrix was 17 years old. She submits that the applicant who was aged 19 years and the prosecutrix aged 17 years were known to each other for almost one year, prior to the incident and that their acquaintance had

developed into a love affair. According to the prosecutrix, she along with the applicant and her friend Sajida along with Vahib had decided to run away. She has stated that pursuant to the same, on 13.02.2015, she left home, along with the applicant and others, in order to get married with the applicant. She has stated that on 13.02.2015 all of them went to Titwala, where she had physical relations with the applicant. On 14.02.2015, the applicant is alleged to have dropped her home, pursuant to which her statement was recorded.

5. Learned counsel for the applicant states that considering the statement of the prosecutrix, it appears to be a case of consensual sex. He states that both, the applicant and the prosecutrix are young and were in love.

6. Learned APP states that as the prosecutrix was aged 17 year, consent is immaterial.

7. Perused the papers, in particular, the statement of the prosecutrix. It appears that the applicant aged 19 years and the prosecutrix aged 17 years were known to each other. No doubt, consent is immaterial considering that the prosecutrix was a minor. However, considering the peculiar facts and circumstances of the case and the fact that investigation is complete and charge-sheet is filed, the applicant is enlarged on bail on the following terms & conditions:

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 10,000/- with one or two local sureties in the like amount;

(ii) The applicant shall attend the Central Police Station, Ulhasnagar on the first Saturday of every month between 10:00 a.m. to 12:00 noon till the conclusion of the trial;

(iii) The applicant shall not tamper or attempt to influence or contact the prosecutrix, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

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.

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

(REVATI MOHITE DERE, J.)