

Anand

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

BAIL APPLICATION NO.1856 OF 2015

Mohd. Riyaz Mehfuz Ali Ansari .Applicant

v/s.

The State of Maharashtra .Respondent

Ms Rohini Wagh, Advocate, for the Applicant
Ms Veera Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.10.2015

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.188 of 2015 registered with the Wadala T.T. Police Station, Mumbai, for the alleged offences punishable under Sections 363 & 376 of the Indian Penal Code and under Sections 4 & 8 of the Protection of Children from Sexual

Offences Act(for short "POCSO" Act).

3. The victim-girl was aged 5 years at the time of the incident and the applicant was about 32 years. According to the prosecution, on 21.04.2015, the minor daughter of the complainant aged 5 years, went to purchase some items from the nearby shop, after which she went missing. As the victim-girl did not return home, the complainant searched for her in the nearby locality, and as she could not be traced, she lodged a missing complaint with the Wadala T.T.Police Station on 22.04.2015 at about 1.00 p.m.. The victim was found by a lady, who brought her to the Wadala T.T.Police Station. On making enquiries with the victim-girl, they learnt, that an unknown person had shown her a one rupee note and asked her to come with him. As she did not go with the said person, he showed her a Rs.10/- note and asked her to come

with him. Again, as the victim refused to go with him, the said person is alleged to have picked up the victim and taken her to a nearby garbage bin, which was by the side of the road. The said person is stated to have removed her clothes and inserted a pen in her private part, thereby causing a bleeding injury. The Wadala T.T.police informed the parents of the victim-girl, who came to the Police Station. Pursuant to what was disclosed, the aforesaid complaint came to be lodged. During investigation, the statement of the victim-girl along with statements of other witnesses came to be recorded.

4. Learned counsel for the applicant does not dispute the fact that the incident had taken place, in which some person had caused an injury to the victim-girl. However, she submits that it was not the present applicant but some other

unknown person. She submits that it is a case of mistaken identity and the applicant has been arrested only on suspicion. She submits that the Test Identification Parade which was held, was held after almost three months and hence the said T.I. Parade cannot be given much credence. She states that the T.I.Parade suffers from several defects. According to the learned counsel, the persons who are put in the T.I.Parade along with the applicant, belonged to different age groups.

5. Learned APP opposes the bail application. She submits that the statement of the victim-girl shows that it was the applicant, who had taken her to an isolated place and inserted a pen in her vagina. She submits that the victim-girl has specifically disclosed in question No.65 that she would be able to identify the said person. She submits that the

Medical report shows that her hymen was torn. She also submits that the victim-girl was in hospital for about 2 and $\frac{1}{2}$ months and that the applicant has been identified by the victim-girl in the Test Identification Parade.

6. Perused the papers. Investigation is complete and charge-sheet is filed. It appears from the statement of the victim-girl that one person forcibly took her to an isolated place near the garbage bin, removed the clothes and put a pen in her vagina, resulting in a bleeding injury. The Medical Certificate supports the said fact that there is an injury caused to her vagina and that she had to undergo a surgery for the tear. The Medical report shows that there was fresh hymen tear extending from the posterior fourchette to the anal sphincter. The victim-girl in her statement had disclosed that she would be able to identify the person, if

shown to her. The victim-girl has thereafter identified the applicant in the Test Identification Parade.

7. Considering the material on record against the applicant and considering the allegations which are serious in nature, this is not a fit case to enlarge the applicant on bail. The Application stands rejected. The case is, however, expedited.

8. Application is accordingly disposed of.

(REVATI MOHITE DERE, J.)