

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

CRIMINAL BAIL APPLICATION NO. 192 OF 2016

Ajay Shankarrao Dandade. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Vikas B. Shivarkar, advocate for Applicant.

Mr. R.M. Pethe, APP for State.

Mr. B.D. Gaikwad, PSI, Lonavala City Police Station, Pune.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 23, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 13th March, 2015 in Crime No.23 of 2015 for the offence punishable under

Section 363, 302, 201, 376 of the Indian Penal Code and under section 3(A), 4 and 5(k)(m) of the Protection of Children from Sexual Offences Act. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 16/2/2015 one Mr. Chhagan Champalal Jain lodged a report at the police station alleging therein that on 15/2/2015 he had been to Lonawala to hotel Kumar resort for attending marriage of his friend's daughter. He was accompanied by his daughter, who was about 7 years old. It is the case of the prosecution that on 15/2/2015 after 8.30 p.m. daughter of Chagan Jain was missing. He had searched for her at all places. On 16/2/2015 he lodged the report. That on 17/2/2015 the dead body of the daughter of Chhagan was found on the terrace of the said hotel. It was apparent that the girl had been sexually abused and then eliminated and that she had died a homicidal death. The first information report was lodged against the unknown person.

4 In the course of investigation, the investigating officer had recorded statement of the whole staff of the hotel Kumar Resort.

5 The applicant was working as security in the said hotel. The statement of the applicant was recorded on 24/2/2015. The applicant had given his past history stating therein that earlier he was working in Lonawala in Green Field Cottage as security guard and one girl had filed a report against him with allegation that he had outraged her modesty. It was out of a private dispute. Thereafter, his wife had also withdrawn herself from the marital relations. As far as the incident is concerned, he had disclosed to the police that on the day of the incident i.e. on 15/2/2015 at about 4.15 p.m. he had seen a small girl aged about 7 years plucking flowers. He had asked the girl about the whereabouts of her parents and she had disclosed that her father had not come and that her mother has also not come, since she is pregnant. The applicant had gathered that the girl had low cognitive capacity. He had enquired with her. She had pointed out a finger towards the gate of Kumar Resort. He had left her at the pop

corn corner. According to him, at about 8 p.m. he was relieved from his duty. Thereafter, he had gone to Maharashtra Wines to purchase bottle of liquor and consumed it and then returned to the room. He had also met Santosh Rai, who was working as security guard. He had seen Santosh Rai proceeding with the girl, but he did not enquire with Santosh. He further disclosed that on 16/2/2015 father of the said girl had shown photograph to him. He had identified the girl as the same girl whom he had seen plucking the flowers. He had told the father that he had seen the girl and in case he needs any help he is willing to cooperate. He had also expressed his suspicion that he had suspected that the girl would go somewhere. On 17/2/2015 the dead body of the girl was found on the terrace. He had admitted in his statement that he has not disclosed about it to anybody.

6 Thereafter, the applicant was subjected to polygraphic test on 26/2/2015. The results would show that the personal history had been revealed in criminal history. The subject had denied his involvement. Answers were disputed during the psychological

analysis. There was discrepancy in the statements given by him on 24/2/2015 and polygraphic test. In any case admissibility of polygraphic test can be seen at the time of trial. Prima facie, investigating agency had realised that the applicant was being disruptive in his statement and in the course of interrogation.

7 It is pertinent to note that from 15/2/2015 till 24/2/2015 although the applicant was in the hotel itself, he has not disclosed about it to anybody much less to the security officer that he had seen the girl in the company of Santosh Rai. It is a matter of record that whereabouts of Santosh Rai are not known since 17/2/2015. Despite that, the applicant had not disclosed to anybody about the same. The conduct of the accused can be considered at this stage under section 8 of the Evidence Act.

8 It is pertinent to note that the applicant had not only attempted to mislead the investigating agency, but he had also attempted to show some cooperation to the father of the victim girl. It can be

safely inferred that the very fact that the applicant had gathered that the girl had low cognitive and intellectual capacity, he had taken advantage of the girl. Compilation of the charge-sheet would show that there is more than sufficient incriminating material against the applicant. At this stage, the applicant does not deserve to be enlarged on bail.

9 The offence is certainly heinous. It is an offence against small girl. The applicant in all probabilities alongwith co-accused had taken advantage of the girl, who was found to be lost for the time being or had drifted from her parents, then ravished her and eliminated her to death. Rest of the submission advanced by the learned Counsel for the applicant can be considered at the stage of trial. Hence, the application being sans merits deserves to be rejected.

10 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The

learned Sessions Judge shall not be influenced by the same at the time of trial.

11 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)