

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 239 OF 2016**

1.	Nitin Deoram Kadali,	
2.	Kantilal Ganpat Pardhi	...Applicants
	Versus	
	The State of Maharashtra	...Respondent

Mr. Purushottam Bhagwan Naiknaware for the Applicants

Mr. Arfan Sait, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 29th APRIL, 2016

P.C. :

1. Heard learned Counsel for the applicants and the learned A.P.P for the State.

2. By this application, the applicants seek their enlargement on bail in connection with C.R. No. 56 of 2015 registered with the Harsul Police Station, Nashik, for the alleged offences punishable under Sections 376, 341, 504, 506 r/w 34 of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. The incident in question has taken place on 1st September, 2015 at about 12 noon, when the prosecutrix was proceeding to work on the agricultural field. She has alleged that both the accused called her, the applicant No. 1 came from behind, put his hand on her mouth and dragged her to the house of the applicant No. 2. Thereafter, the applicant No. 2 shut the door of the house from outside and left the place. Thereafter, the applicant No. 1 who is alleged to have tied her hands with a string, put a white coloured handkerchief on her mouth and thereafter sexually assaulted her. She has stated that she requested the applicant No. 1 to leave her, however, he did not paid any heed to her request. After the physical assault, the prosecutrix shouted for help, after which, her sister came and she informed about the said act to her parents. Thereafter, the complaint was lodged on 6th September, 2015 as against the applicants.

4. Learned Counsel for the applicants submits that the delay in registering the FIR has not been explained by the prosecutrix. He submitted that the role of the applicant No. 2 is distinct from that of the applicant No. 1, inasmuch as, he is not alleged to have sexually assaulted the prosecutrix.

5. Learned A.P.P opposed the bail application. He submitted that the prosecutrix has specifically disclosed the names of the applicants and has assigned specific roles to each of them. As far as the delay is concerned, the same has been explained by the prosecutrix. He tendered a copy of the Chemical Analyser's report which shows that blood was found on the clothes of the prosecutrix. He submitted that the medical report of the prosecutrix shows that her hymen had torn.

6. Perused the papers. Both the applicants have been specifically named by the prosecutrix and a specific role has been assigned to each of them. Although the applicant No. 2 has not committed sexual assault on the prosecutrix, the fact remains that he facilitated the physical assault by the applicant No. 1 on the prosecutrix. The prosecutrix at the relevant time, was aged about 17 years. The CA report also shows that there was blood found on the clothes of the prosecutrix. The medical report also shows that her hymen was torn. The delay has also been sufficiently explained by the prosecutrix. The possibility of the applicants tampering with the witnesses, in particular, the prosecutrix, considering her age, cannot be ruled out.

7. Considering the aforesaid material, this is not a fit case to enlarge the applicants on bail. Accordingly, the application is rejected.

8. Learned Trial Judge shall decide the case on its own merits uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.