

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 465 OF 2016

Nikhil Dilip Baviskar	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. Sanjiv Sawant i/b. Mr. Abhishek P. Deshmukh a/w. Ms. Radhika Sawant, Advocate for the applicant.
Mrs. S.S. Kaushik, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **9th March, 2016.**

P.C.:

This Application is moved for bail, as the applicant/accused is facing prosecution under section 376(2)(j)(2)(n) r/w. 34 and under section 3, 4, 5(L), 6, 16 & 17 of Protection of Children from Sexual Offences Act, 2012 in C.R. No. I-315 of 2016 with Vitthalwadi Police Station. The offence is registered at the instance of mother of the prosecutrix on 20th October, 2015.

2. It is the case of the prosecution that prosecutrix was studying in XI Std. at Ulhasnagar. On 19th October, 2015 she went to the college but did not return home. Therefore, her family members started enquiring about her. She returned home on the next date at 15.30 hours and informed that applicant/accused, who is friend of principal accused Mukush Shivnath Ahire, told her that Mukush Ahire asked her to meet him at 8 p.m. and

then applicant took her near water tank of the school. The principal accused Mukesh arrived there on his motorcycle and then applicant/accused and his friends left her there. Mukesh Ahire promised her that he would marry her and told her to come with him. He also threatened that if she would not come with him, then he will not leave her family members. The prosecutrix went with Mukesh Ahire to his house. They had food and then he had sexual relations with her. Thereafter he took her to Haji Malank and they were chitchatting at the road side. Then he dropped her and she came home in the afternoon. Her statement under section 164 was also recorded. Same role is attributed to the applicant/accused and it is further added by prosecutrix that applicant/accused used to touch her body and also of her two friends.

3. The learned counsel for the applicant/accused submitted that applicant/accused is a friend of principal accused Mukesh Ahire, who is facing charges under section 376. Considering the role attributed to applicant/accused, he has not committed any offence much less the offence under section 376 r/w. 34 and under Prevention of Children from Sexual Offences Act. The learned counsel further submitted that from October 2015, the applicant/accused in the prison. He is a boy of 19 years, who is studying in F.Y.J.C. His examination is scheduled on 31st March, 2016.

4. Learned APP opposed the Bail Application. She submitted that the applicant/accused is charged under section 376 r/w. 34 of the Indian Penal Code and also under Prevention of Children from Sexual Offences Act. She submitted that principal accused Mukush Ahire has created terror in the vicinity and therefore, the prosecutrix could not raise any objection. The applicant/accused has forcibly took her to principal accused Mukush Ahire near the water tank.

5. I have gone through the FIR given by the mother of the prosecutrix, statement of the prosecutrix and also her statement under section 164. In her statement, the prosecutrix has mentioned that applicant/accused used to touch the body of her two friends. A statement of one of her friends is recorded, however, she has not stated anything about it. On the contrary, her friend has stated that applicant/accused told her that Mukesh is awaiting for her and she went along with him without any resistance. Considering the contents in the statement and tenure of the behaviour of the prosecutrix, *prima facie* no role is attributed to the applicant/accused. Even after considering the documents produced and the allegations made against the applicant/accused, I do not find any evidence against him. The applicant/accused is detained in prison since October, 2015. It is a fit case to grant bail. Hence, bail is granted to the applicant/accused on the

following terms and conditions:

ORDER

- (i) The applicant/accused be enlarged on bail on furnishing PR. Bond in a sum of Rs.10,000/- with one or two sureties in the like amount.
- (ii) The applicant shall not tamper with the evidence.
- (iii) The applicant shall not harass, threaten or pressurize the complainant and her family members.
- (iv) The applicant shall not indulge into any kind of criminal activity.
- (v) The applicant shall make himself available and attend all Court dates;
- (vi) The applicant shall not abscond and furnish his address to the police along with address proof.
- (vii) The applicant shall not leave India without the prior permission of the Court.
- (viii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

6. The Application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)