

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.516 OF 2016

ABUKALAM AINULHAQ SHAIKH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Tahera Abdul Rashid Qureshi, Advocate for the Applicant.

Mrs.Rutuja Ambekar, APP for the Respondent - State.

CORAM : P. N. DESHMUKH, J.

DATE : 20th JULY 2016.

P.C. :

1 Applicant involved in Crime No.609 of 2015 registered
with Mahatma Phule Chowk Police Station for the offences
punishable under Sections 376(2)(i)(k) and 506 of the Indian
Penal Code read with Sections 3 and 4 of Protection of Children
from Sexual Offences Act, 2012, (POCSO Act) has sought regular
bail.

2 Heard learned counsel for both the sides. Learned counsel for applicant has submitted that applicant is falsely implicated by mother of prosecutrix, who is minor aged 13 years, as she married applicant without disclosing him fact of her earlier marriage and without obtaining divorce from her first husband. Learned counsel for applicant by referring to the copies of charge-sheet has submitted that on considering statement of neighbour, it cannot be said that prosecutrix was sexually assaulted by applicant on the date of incident, as she had not disclosed such fact to neighbour. It is further contended that from the medical evidence it cannot be said that applicant has sexually assaulted prosecutrix since the medical report is negative. It is, therefore, prayed that application be allowed by imposing suitable conditions.

3 On the other hand, learned APP opposed the application on the ground that there is direct evidence establishing involvement of applicant in the crime, and as such, submitted that statement of prosecutrix corroborates with the

version of complainant – mother of prosecutrix, and medical evidence. She has, therefore, opposed for grant of bail.

4 Perused the report dated 23rd June 2015 lodged by Arti Shedage – second wife of applicant. It reveals that prosecutrix is complainant's daughter from her first marriage and both of them were residing with applicant on the date of incident. On 23rd June 2015, complainant left house at 7.30 a.m. to visit hospital situated on Bombay – Nashik road, as instructed by her employer Dr.Meenakshi Puranik in whose hospital she was working as a maid and thus prosecutrix was alone in the house with applicant. It further reveals that complainant met applicant and prosecutrix on that day at Ambivali Station at 3.30 p.m. as all of them were to go together to Thane. While they were traveling together in the train, prosecutrix disclosed about the incident to complainant involving applicant, to have sexually assaulted her while she was alone in the house after complainant had left in the morning. Contents of report also reveal that applicant has committed said act on extending threats to kill the prosecutrix.

5 It appears that immediately on getting this information, complainant took prosecutrix to the nearby police station and lodged the report, on the basis of which, offence as aforesaid came to be registered.

6 From documents filed to the charge-sheet it appears that prosecutrix was examined on the same day in the government hospital at Kalyan wherein it is certified that there was no evidence of injuries found on the person of prosecutrix and her hymen was found intact and that no incident of any vaginal intercourse was reported. Apart from findings as aforesaid, the Medical Officer however had certified that on medical examination attempt of rape cannot be ruled out. In that view of the matter, when the medical evidence is considered with the statement of complainant, as well as that of prosecutrix, though it is belatedly recorded after lapse of ten days, prima facie it reveals that contents of these documents sufficiently corroborate with each other, thereby establishing involvement of applicant in the present case.

7 Perusal of statement of neighbour Smt.Samyunisa reveals that on the day of incident at around 10.00 a.m., she being neighbour had occasion to see prosecutrix coming from outside and entering in her house with some purchases and not disclosing her about the incident, however this by itself cannot be considered as a ground in favour of applicant to establish his false implication, as considering the age of prosecutrix who is just 13 years old, appears to have disclosed the incident to her mother, and not to some strange female, though her neighbour. In that view of the matter, I find no substance in said submission, same is liable to be rejected.

8 Application is accordingly rejected. However, learned counsel for applicant at this stage has contended, that applicant is the only earning member in the family, having two small children and wife, and prays for expediting the trial. In the circumstances, following order is passed :

i) Application is rejected.

However, learned Sessions Judge who is seized with sessions case arising out of Crime No.609 of 2015 registered with Mahatma Phule Chowk Police Station, Thane, shall make an endeavour to dispose of above stated case expeditiously, within period of six months from the date of framing of charge.

ii) Registrar (Judicial) to communicate this order to the concerned court.

9 Needless to say that the learned trial court shall not get influenced with the observations as above and shall independently decide the trial.

(P. N. DESHMUKH, J.)