

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.1034 OF 2016

Shajid Aalam Mohammad Hasim Miya Ansari ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Sujit S. Mishra, Advocate for the Applicant.

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

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CORAM : P. N. DESHMUKH J.

DATED : 10th AUGUST 2016.

P.C.

1 This is an application for bail by accused involved in Crime No.386 of 2015 registered on 30/11/2015 by Shahunagar Police Station, Mumbai for the offence punishable under Sections 363, 376 of the Indian Penal Code and Sections 4,8 and 12 of Protection of Children from Sexual Offences Act, 2012.

2 Heard learned counsel for both the sides.

3 Learned counsel for the applicant by referring to the contents of FIR lodged by mother of victim girl aged 6 years and victim boy aged 3 years who are related to complainant, has submitted that contents of report do not corroborate with the statements of prosecutrix, as according to the contents of report, there is nothing to establish that prosecutrix had identified applicant in embroidery shop,

where he is alleged to have visited. In fact, it is submitted that, at the time of incident both the minor victims, had visited the embroidery shop of applicant to see embroidery machines, and, as such, their images are captured in the CCTV camera and, as such are found visiting said shop on the date of incident.

4 Learned counsel for the applicant has then referred to statement of Salman Mohd. Salim Shaikh and Safi Mohd. Sayeed Qureshi, and has attempted to establish that their statements contradict contents of report and, therefore, submitted that as there is no convincing material on record, applicant be released on bail.

5 Learned Additional Public Prosecutor opposed the application contending that there is direct evidence against the applicant, and the contradictions pointed out do not establish his innocence, being not material and has submitted that considering the age of both the victims, application be rejected, though there is no positive medical evidence.

6 With reference to arguments advanced on behalf of the applicant, I have perused the FIR, wherefrom it reveals that on 30/11/2015 at about 5.00 p.m., both the minor victims, while playing in the courtyard, were taken by applicant in his embroidery shop, and are stated to have been sexually assaulted. Said fact was informed by the victims to mother of prosecutrix. On receipt of such information, complainant accompanied with both the minor victims visited Gala No.4, which is embroidery shop of applicant, along with her father

Mohd. Shafi Qureshi and their neighbour Salman Shaikh, and on reaching in the said shop, on inquiring with the prosecutrix, she pointed towards one person, who was present there and was then apprehended and brought to Shahunagar Police Station, where on inquiry he disclosed his name as that of applicant, and accordingly, he came to be arrested. Considering the contents, as aforesaid, it is thus submitted that there is nothing to establish that the person apprehended was pointed out by the prosecutrix, but as said person was present in the shop, he came to be apprehended.

7 In the light of contents of FIR, as aforesaid, on considering the statements of Salman Shaikh and Shafi Qureshi, who had accompanied prosecutrix, as well as, complainant to the embroidery shop, they have stated that on reaching in the embroidery shop, on inquiry with the prosecutrix, she pointed out her finger to one person, who was accordingly apprehended and brought by them in the Police Station, who disclosed his name as that of applicant.

8 Similarly, from the statements of both the victims, involvement of applicant is *prima facie* established, as in reply to questions put to them, it is stated that applicant was present in the shop, where he had taken them.

9 In the circumstances, it cannot be said that there is no material against the applicant or there are material contractions in the statements of these witnesses. On the contrary, from the statement of Brijesh, CCTV Engineer it is revealed that on the date of incident victim girl was found entering and coming out of the embroidery shop.

10 In the circumstances, applicant's involvement in the present crime is *prima facie* established. In that view of the matter, as per medical evidence, even there are no injury marks stated to be found on the person of the victims, that by itself is no ground to allow the application. Application is, therefore, liable to be rejected as per order below.

11 Application is rejected.

12 In the event, no charge is framed within one year from today, applicant shall be at liberty to move afresh for bail.

13 Application stands disposed of in above terms.

(P. N. DESHMUKH J.)