

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.1150 OF 2016

Ibarat Hussain Alias Bablu

Kaisar Hussain Shaikh

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

.....

Mr.S.A.Shiakh, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 15th JUNE 2016.

P.C.

1. Accused Ibarat Hussain @ Bablu Kaisar Hussain Shaikh involved in Crime No.I-182 of 2015 registered by Bhayandar Police Station on 09/09/2015 for the offences punishable under Sections 363, 376 (2) (I) of the Indian Penal Code read with Sections 4 and 8 of the Protection of Children from Sexual Offences Act, has applied for bail.

2. The learned counsel for the applicant has submitted that neither of the Sections which are applied are attracted and has submitted that the applicant is falsely involved as prosecutrix, in fact, was having love affair with one Vikas and was indulged in

sexual relations with him. It is also contended that according to the medical report age of prosecutrix was between 16 to 17 years.

3. The learned Additional Public Prosecutor has submitted that while the victim girl came to meet the sister of applicant, the applicant, who was alone in the house, took advantage of such situation and sexually assaulted her. On perusal of FIR, it appears that initially offence of kidnapping was registered as from the date of incident i.e. 22/08/2015, the girl was missing from her house when she left to attend her tuition. It appears that after leaving the house, when the victim went to the house of applicant to take his sister-Parvinbanu for tuition, taking advantage of this situation, accused took the victim inside the house and by closing the door outraged her modesty by touching to her person and to her private part. From the contents of report, it further reveals that accused has extended threats to her and sexually assaulted.

4. In the background of contents of report, as aforesaid, it further appears that after the incident, victim girl instead of going to her house on the pretext of her being in fear of her parents, first went to Bhayandar by auto rickshaw and then by train to Dadar and then to CST Railway station, where she slept over night. On 23/08/2015, she boarded one train proceeding to her native place, wherein she came in contact with two persona namely

Imran and Dipak to whom she has stated that she has visited Bombay in search of employment, however, since she could not get employment, she is going back to her native place. Both these persons then informed that they have the work of catering and on saying so victim accompanied them after alighting from the train at Kalyan station and went to Ambivali. Victim thereafter stayed in the house of Imran along with his mother for two to three days and on 25/08/2015, without informing anyone left the house of Imran and went to Ambivali station and reached CST. On this day, while she was wandering on platform of CST railway station, she was found by one woman from NGO, who took her to CST Railway Police Station.

5. From the contents of report together with the medical papers wherein the victim has stated history that she is having love affair with one Vikas with whom she is stated to have physical relations and since she further stated that she had sexual contact with him about four months before, the victim, in this background, cannot be said to be of good character, and, as such, possibility of her implicating accused cannot be ruled out.

6. In the circumstances and since charge sheet is stated to be filed, application is allowed as per order below imposing suitable condition upon the applicant.

- (i) Applicant shall be released on bail on his executing personal bond in the sum of Rs.25,000/- with one surety in the like amount.
- (ii) Applicant while on bail shall not tamper with the evidence and shall not make any attempt to meet Victim-Arti Suresh Pal.
- (iii) In the event of his attempting to meet the victim, prosecution shall move for cancellation of bail.
- (iv) Applicant shall mark his presence with Bhayandar Police Station on first day of each month pending trial.

(P. N. DESHMUKH J.)