

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1175 OF 2016

Habibulla alias Barister .Applicant
Karimulla Shaikh

Vs.

The State of Maharashtra .Respondent

Mr.Amin Solkar i/b. Mr.M.Solkar, Advocate, for
the Applicant
Ms Anamika Malhotra, APP, for the Respondent –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 26.10.2016

P.C.

. Heard learned counsel for the Applicant
and the learned APP for the State.

2. This is the Second Bail Application preferred by the Applicant. The Applicant had earlier preferred an Application, being Cri.B.A.No.1829 of 2014, seeking his enlargement on bail. The said Application was disposed of vide order dated 18.02.2015. The said order reads thus :-

" At the outset, the learned counsel for the Applicant seeks leave to withdraw the Application, as the trial is being expedited, considering the peculiar facts of the case. Accordingly, the trial of the Applicant which is pending before the learned Additional Sessions Judge, Palghar being Sessions Case No.8 of 2014, is expedited.

2 The learned trial Judge to hear and dispose of the applicant's case, as expeditiously as possible, and as far as possible within four months from the date of receipt of the order.

3 If for any reason, the trial is not completed within a period of four months for no fault of the Applicant, the Applicant is at liberty to renew his prayer for bail.

4 Registry is directed to inform the concerned Court accordingly.

5 Parties to act on an authenticated copy of this order.

6 In view of the order passed in bail application no.1829 of 2014, Criminal Application No.31 of 2015, does not survive and is disposed of

accordingly."

3. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.186 of 2013, registered with the Boisar Police Station, for the alleged offences punishable under Sections 363, 366A, 376 of the Indian Penal Code and under Sections 4 & 8 of the Protection of Children from Sexual Offences Act.

4. Learned counsel for the Applicant submits that despite the direction to the trial Court, to complete the trial within four months from the date of receipt of the order, the trial has yet not commenced. He submits that pursuant to the liberty granted by this Court to renew his prayer for bail, if the trial does not conclude within four months, the Applicant has filed the aforesaid Application. Learned counsel for the Applicant submits that the prosecutrix was an adult, aged 20 years at the

relevant time. He submits that it is a case of love affair, between the Applicant and the prosecutrix and that both had run away and were residing together in Uttar Pradesh. He submitted that considering the fact, that it is a case of love affair and as trial has not commenced, the Applicant be enlarged on bail.

5. Learned APP opposes the Application. She submitted that the Complainant was summoned twice in the said case, however, as the Applicant wanted to change his Advocate, the matter was adjourned. The said submission was vehemently opposed by the learned counsel for the Applicant. He refutes the submission that any adjournment was sought by the Applicant.

6. Perused charge-sheet. It appears that the prosecutrix at the relevant time was about 17 years and 9 months. The Complainant is the father of the prosecutrix. It appears that the Applicant would visit the house of the prosecutrix. A perusal of the

statement of the prosecutrix shows that the Applicant, a rickshaw driver was known to the prosecutrix from 2011, as he would take her and her two sisters to School in the rickshaw. She has stated that even for household work, the Applicant was called to avail of his Rickshaw facility. She has stated that when she would travel in the Rickshaw, the Applicant would try and get close to her and as such, the Applicant had forcible intercourse with her. She has also alleged that the Applicant told her not to disclose the said incident to any person, as she would be defamed. The Applicant is also stated to have threatened her with dire consequences. She has stated that despite the fact, that the Applicant had forcible intercourse with her on several occasions, she did not disclose the same to any person. She has stated that thereafter, when she went to her Aunt's house, the Applicant followed her and also had forcible intercourse with her at the said place. She has stated that thereafter, she became pregnant and delivered a child. She has stated that the Applicant

had forcibly taken her to Uttar Pradesh and had threatened her with dire consequences, as a result of which she did not disclose the same to any person.

7. According to the learned counsel for the Applicant, the Applicant had married the prosecutrix and that the prosecutrix was his wife. The said submission is not borne out by any material on record. According to the prosecutrix, the Applicant had forcible sexual intercourse with her and had threatened her with dire consequences, if she disclosed the said incident to any person. The Applicant, aged 33 years is a married man, with seven children, whereas the prosecutrix, at the relevant time was only 17 years and 9 months. Prima facie, it appears that Applicant had taken advantage of his position and had sexually exploited the prosecutrix.

8. Considering the statement of the prosecutrix and the material on record, this is not

a fit case to enlarge the Applicant on bail. Accordingly, the Application stands rejected and is disposed of. The police to ensure that the Applicant is produced on every date before the trial Court, in order to enable the trial Court to commence with the case and conclude the same as expeditiously as possible.

9. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)