

*Ladda*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO. 1270 OF 2016

Shahnawaz Rehman Shaikh                      ..Applicant.  
Vs  
The State of Maharashtra                      ..Respondent.

Mr Rajendra Megh i/by Anand Pande, Advocate  
for the applicant.  
Mrs J.S. Lohokare, APP for the State.

-----

CORAM :A.S.GADKARI, J.  
DATE : 19th September, 2016.

P.C.

- 1) This is an application under section 439 of the Code of Criminal Procedure, 1973 for bail in C.R. No. 350/2015 dated 28/9/2015 registered with M.H.B. Colony Police Station, Mumbai under sections 376, 376 (d) 377 read with 34 of the Indian Penal Code and under sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, ( for short "POCSO Act") now culminated in Special Case No. 201/2015 and pending on the file of the learned Special Judge under POCSO Act, Mumbai.
- 2) The first information report is lodged by the minor victim girl on 28/9/2015. With a view to protect the identity of the minor victim girl and in consonance with the provisions of

Section 228 (A) of the IPC, the name of the victim and the detailed narration of facts mentioned in the first information report and/or in the statement of the victim girl are hereby avoided. Suffice it to say that on the basis of the report given by the first informant the present crime is registered by the police. The first informant in the report has categorically stated that the applicant along with co-accused (juvenile accused) who was her friend abducted her, took her to an isolated spot and then committed the offence as contemplated under section 376 (d), 377 of the IPC and under section 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012. After completion of the investigation, the police have submitted the final report which is now culminated in Special Case No. 201 of 2015.

3) Heard the learned counsel for the applicant and the learned APP. I have also perused the copy of the charge-sheet annexed to the application.

4) The learned counsel for the applicant submitted that the applicant was hardly 19 years of age at the relevant time. That he has ailing parents to take care of and therefore he should be released on bail. He further submitted that it is only the

allegation which is not yet proved and for availing the defence in the said trial he may be released on bail. He further submitted that the present applicant was a passer-by and when he noticed the alleged act as contemplated under section 376 of the IPC, the victim girl has falsely implicated him as an accused in the present crime. He further submitted that no purpose would be served by further detaining the applicant in jail and he may be granted bail.

5) A bare perusal of the first information report would reveal that the applicant is alleged to have committed a heinous crime and therefore apart from sections of the Indian Penal Code, the aforestated provisions of the Protection of Children from Sexual Offences Act are also applied to the present crime. At this stage, there is no reason to disbelieve the statement given by the victim girl before the police. It is to be noted here that the alleged offence was committed by the applicant and co-accused at about 7:00 p.m. to 7:30 p.m. on 28/9/2015 and the present crime is immediately registered at about 10:50 p.m. on the same day. The victim in her statement has categorically stated that immediately after the said sexual assault, she rushed to her house, informed the said act to her mother and along

with her parents she immediately went to the police station for lodging the first information report. It is the settled position of law and as has been enumerated by the Supreme Court in the case of *State of Himachal Pradesh vs. Shree Kant Shekari* reported in AIR 2004 Supreme Court 4404, that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional.

6) The first information report lodged by the victim would reveal that the statement made by the victim girl is not only trustworthy but reliable too. In view of the same and in view of the fact that the applicant is alleged to have involved in a heinous crime, I find that this is not a fit case to release the applicant on bail. The application is accordingly dismissed.

7) At this stage, the learned counsel for the applicant made a request that the trial pertaining to the present case may be expedited on the ground that the applicant was arrested on

29/9/2015 and since then he is in jail. The learned Special Judge seized of the Special Case No. 201/2015 is hereby requested to expedite the hearing of the said case.

(A.S. GADKARI, J.)