

NSC.

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

CRIMINAL BAIL APPLICATION NO.1425 OF 2016

Javed Aziz Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Sanjay Kumar VP Vishwakarma, for the Applicant.

Ms.P.P.Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
DATE : 15th OCTOBER, 2016

P.C. :

1. This is the second bail application preferred by the applicant. In the first bail application preferred by the applicant, being Bail Application No.282 of 2016, this Court was pleased to pass the following order:-

“ After arguing for some time, learned counsel for the Applicant seeks leave to withdraw this Application.

2. Accordingly, the Application is dismissed as withdrawn.”

2. Learned Counsel for the applicant submitted that initially on

2nd September, 2015, a complaint was lodged by the prosecutrix's mother alleging an offence punishable under Section 363 of the Indian Penal Code. He submitted that later i.e. on 5th September, 2015, Sections 376(2) and 506(2) r/w 34 of the Indian Penal Code and Sections 4, 6, 8, 10 and 12 of Protection of Children from Sexual Offences Act, 2012, came to be added. He submitted that a perusal of the prosecutrix's statement shows that her statement alleging rape cannot be accepted, as there were a number of people present in the house at the relevant time and as the prosecutrix had not received any injury/abrasion on her body, despite allegations of forcible rape on her, by the applicant. He submitted that even the applicant has not sustained any injury/scratch marks and that even the CA report does not support the prosecution case. According to learned counsel, even the birth certificate on page 109 of the application, cannot be accepted considering the discrepancy in the said certificate, and the bone ossification report. He submitted that the applicant has been languishing in jail since the date of his arrest i.e. from 5th September, 2015 and despite charge having been framed in June 2016, there has been no progress in the said case.

3. Learned APP opposed the bail application. She submitted that all the arguments raised in the application were raised in the earlier bail application and as this Court was not inclined to enlarge the applicant on bail, the earlier bail application was withdrawn. She submitted that there is no change of circumstance warranting any interference.

4. Perused the papers, in particular the statement of the complainant and of the prosecutrix. It appears that a missing report was lodged by the prosecutrix's mother on 2nd September, 2015, after her daughter went missing from the house. The said complaint was lodged for an offence punishable under Section 363 of the Indian Penal Code. It appears that subsequently on the next date i.e. on 3rd September, 2015, the prosecutrix returned home, after which the supplementary statement of the prosecutrix mother, was again recorded. The prosecutrix's statement under Section 164 was also recorded on 5th September, 2016. A perusal of the prosecutrix's statement shows that she had gone out to purchase an article at the request of her mother, when her friend called her to her residence. She has alleged that her friend introduced her to the applicant and stated that the applicant was known to her family very well. She has

stated that her friend took the applicant to a room where they had a talk and thereafter took her to the room. According to the prosecutrix, her friend left her alone in the room with the applicant and that the applicant had forcible sexual intercourse with her. She has stated that thereafter, she went back to her home on the next day and disclosed the said incident to her mother. The medical case papers shows that the prosecutrix had given the same history to the Doctor who examined her. Merely because the prosecutrix has not sustained any injuries, does not mean that there is no substance in her statement. Whether or not the prosecutrix was aged 15 years at the time of the incident (according to the prosecution) or was older is a matter which will be decided by the trial Court. The prosecution has relied on the School Leaving Certificate, where the prosecutrix was studying, which shows her date of Birth as 10th December, 1999 i.e. she was a round 15 years at the time of the incident. Whether or not she was 17 years or even more at the time of the incident is a matter which will be considered by the trial Court.

5. Considering the nature of allegations, the Application for bail is rejected and disposed of as such. However, the trial of the applicant is

expedited. It appears that charge in the said case was framed in June, 2016. The prosecution to take effective steps to ensure that the applicant is produced on every date of the hearing, so as to enable the learned Judge to proceed with the case.

6. It is made clear, that the observations made herein, are prima-facie, for the purpose of deciding this application and the learned Judge shall decide the case on its own merits, uninfluenced by the observations made in this order.

7. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.