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

BAIL APPLICATION No.1755 OF 2015

Kamruddin Gayasuddin Sheikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.Satyavrat Joshi, Advocate, for the Applicant
Mr.D.P.Adsule, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 14.03.2016

P.C.

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

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No. 65 of 2014, registered with the Wanawadi Police Station, District – Pune, for the alleged offences punishable under Sections 109, 354, 376 & 506(1) of the Indian Penal Code and under Sections 4, 5, 6, 8, 16(17), 19 & 21 of the Protection of Children

from Sexual Offences Act, 2012 (For short "POCSO" Act)

3. The prosecutrix aged 11 years is a student and would commute to school in a school bus. The other co-accused is Khalid Mohammad Pathan, who is stated to have committed sexual assault on the prosecutrix. It is alleged by the prosecution, that co-accused Khalid Pathan would divert all the children to another school bus who drop them to their respective houses and would then take the prosecutrix to a lonely place, where he would sexually assault the prosecutrix. The Applicant is the driver of the said school bus, who had taken the co-accused and the prosecutrix to the spot, where the sexual assault was committed.

4. Learned counsel for the Applicant submits that there are no allegations of 376 qua the Applicant. He submits that the allegations are as

against co-accused Khalid Pathan. He submitted that till date, charge has not been framed and the Applicant is in custody since 16.04.2014.

5. Perused the papers. Although the Applicant is not alleged to have committed sexual assault on the prosecutrix, nevertheless, there is a charge of abetment as against the Applicant. Section 34 has also been applied in the said case. Section 16 of the POCSO Act defines abetment of an offence and section 17 provides for punishment for abetment. As per Section 17, any person whoever abets any offence under this Act, if the Act is committed or not, he shall be awarded punishment for the said Act. Explanation to the said Section reads thus:-

"Explanation.- An Act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment."

Section 21 provides for punishment for failure to report or record a case. It is the Applicant, who had driven the bus, with co-accused Khalid Pathan and the prosecutrix, in it, to a secluded spot, where the alleged sexual offence was committed.

6. Perused the statement of the prosecutrix. Prima facie, the Applicant was aware of the alleged offence being committed.

7. Considering the nature of allegations which are serious in nature, the Application stands rejected.

8. It is made clear, that the observations are prima facie, for deciding this Application and that the learned Judge shall decide the case on its own merits uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)