

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No.4 OF 2017

Altaf Rashid Shaikh

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr.Satyavrat Joshi, Advocate, for the Applicant

Mr.S.H.Yadav, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 06.04.2017

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 2015 registered with the Junnar Police Station, Pune(Rural), for the alleged offences punishable under Sections 363, 366, 376 of the Indian Penal Code and under Sections 4 & 12 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the Applicant states that the prosecutrix had gone with the Applicant on her own accord and

the relations, if any, were consensual. He submitted that there is variance in the 161 statement of the prosecutrix with her 164 statement recorded by the Magistrate.

4. Perused the papers.

5. A perusal of the 161 statement of the prosecutrix dated 13.06.2016 shows that at the relevant time, she was 16 years of age and the Applicant was about 21. She has stated that she knew the Applicant very well, as he used to come to her house regularly and that they were in love with each other. She has stated that their relationship was opposed by their families and as her parents were planning to get her married to somebody, she and the Applicant decided to run away from home and stay together. She has stated that on 14.05.2015, after all the family members slept, she left with the Applicant at about 1.30 a.m. in the night. She has further stated that they both went to Kalyan by S.T. and took a room on rent and started residing there as husband and wife and as such had physical relations. In the 164 statement recorded by the Magistrate on 21.06.2016, the prosecutrix has stated that the Applicant was their neighbour and that she did not know him well. She has further

stated that he forcibly took her to Kalyan. She has stated that as he had sprayed something on her face, she was not aware of what was happening. She has stated that the Applicant locked her in a room at Kalyan and used to give her sleeping tablets. In her 164 statement, the prosecutrix has not made any allegation of sexual assault by the Applicant. The medical history given to the Doctor shows that the prosecutrix had run away with the Applicant and was staying with him at Kalyan for one year. She has given history of single consensual intercourse with the Applicant two months back. She has not given any history of physical assault.

6. Considering the peculiar facts of this case and the fact that investigation is complete and charge sheet is filed, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

O R D E R

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the **first Monday of every month** between **10:00 a.m. to 11.00 a.m.** till the conclusion of the trial;

(iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. 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.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)