

Anand

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

BAIL APPLICATION No.58 OF 2017

Swapnil Jagannath Salve .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.M.M.Kondekar, Advocate, for the Applicant
Mrs.S.S.Kaushik, 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.464 of 2016 registered with the Yerawada Police Station, Pune, for the alleged offences punishable under Sections 363, 376, 506 of the Indian Penal Code and under Sections 5(n) & 6 of the Protection of Children from Sexual Offences Act (For short “POCSO”).

3. Learned counsel for the Applicant submits that the prosecutrix was about 17 years of age at the relevant time and

the Applicant was 21. He submits that the prosecutrix, in her first statement dated 24.06.2016 has stated, that she had left the house on 20.06.2016 on her own accord and had returned home on 24.06.2016. She has stated that nobody had induced her to leave the house nor had any untoward incident taken place on her. She has stated that she had no complaint against any person. Thereafter, the prosecutrix was medically examined on 27.06.2016, where she gave history of sexual assault by the Applicant. Pursuant thereto, her supplementary statement was recorded on 29.06.2016, wherein she disclosed how she had left the house with the Applicant and how the Applicant had physical relations with her. According to the learned counsel, it is a case of consensual relations.

4. Learned APP opposes the bail Application. She submitted that the prosecutrix was a minor aged 17 years and hence consent is immaterial.

5. Perused the papers. The complainant is the brother of the prosecutrix. The complainant lodged a complaint on 20.06.2016 as against unknown person as his sister had gone missing. It appears that the prosecutrix returned home on

24.06.2016, pursuant to which, her statement was recorded by the police. In the said statement dated 24.06.2016, the prosecutrix has stated that she had left the house on her own accord on 20.06.2016 at 12.00 noon and gone to a garden and had returned home on 24.06.2016. She has stated in the said statement that nobody had induced or instigated her to leave the house. She has also stated that no one had committed any untoward act on her. It appears that pursuant thereto, the prosecutrix was sent for medical examination on 27.06.2016. It is recorded in the said medical report, that the prosecutrix gave history of sexual assault by the Applicant. She has stated that she met the Applicant at a shop on 20.06.2016 and that she roamed around with the Applicant at Nagpur chawl. The victim has given history of vaginal intercourse 2-3 times, but no history of physical assault. The victim has stated, that she returned home on 24.06.2016. Pursuant to the said history given to the Doctor, the prosecutrix's supplementary statement was recorded on 29.06.2016, wherein she has stated that she had met the Applicant as he was residing in the same locality. She has stated that the Applicant professed love for her and hence, she started talking to him. She has stated that the Applicant had physical relations with her on a couple of occasions at the garden.

According to the prosecutrix, on 20.06.2016 when she was sitting at the garden at about 12.30 p.m., the Applicant came and professed his love for her and thereafter, he had physical relations with her and left her at the garden. She has stated that she waited in the garden as she was afraid of returning home and hence, was roaming around in the area. Considering the fact, that the prosecutrix was a minor aged 17 years, consent is immaterial.

6. However, considering the peculiar facts of this case, statement of the prosecutrix 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.20,000/- 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 11:00 a.m. to 12:00 noon till the conclusion of the trial;

(iii) The Applicant shall not enter the jurisdiction of Nagpur chawl where the prosecutrix is residing;

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

(v) 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;

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

(vii) The applicant shall file an undertaking that he will comply with the aforesaid clauses (ii) to (vi). The said undertaking shall be filed within two weeks of his release, in the trial Court;

(viii) 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.)