

Anand

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

BAIL APPLICATION NO.80 OF 2017

Purshottam Naidu .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. M. Desai i/b. Mr. T. R. Patel, Advocate, for the Applicant
Mr. V. V. Gangurde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.09.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.186 of 2016 registered with the Dahisar Police Station, Mumbai, for the alleged offences punishable under Sections 376 (2)(j), 376(D), 366, 323, 506 r/w 34 of the Indian Penal Code and under Sections 7 & 8 of the Protection of Children from Sexual Offences Act (for short 'POCSO').

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. He submitted the

statement of the prosecutrix defies logic, if the incident and the conduct of the prosecutrix, her mother and witness – Govil Vijay Shah, is taken into consideration. He submits that although, the statement is shown to have been recorded on 05.05.2016, the FIR was lodged on 06.05.2016. He further submitted that there are inconsistencies in Govil Shah's 1st statement and the supplementary statement.

4. Learned APP opposes the Application.

5. Perused the papers, in particular, the statement of the prosecutrix. The prosecutrix was about 16 years of age at the relevant time. She has stated that on 04.05.2016 she had gone to wish her friend, as it was his birthday; and that at about 11.45 p.m. she met Govil and was chatting with him till about 12.00 midnight. She has stated that at about 12.00 midnight when she was chatting with Govil, the Applicant alongwith Vicky came in an Auto Rickshaw and on seeing her stopped the Auto Rickshaw. She has alleged that co-accused – Vicky called her, pursuant to which she went towards the Auto Rickshaw. She has stated that co-accused – Vicky pushed her from behind and the Applicant pulled her in the Auto Rickshaw. She has alleged that she tried to shout, however, the Applicant had pressed her mouth and co-accused – Vicky

had held her hands. She has stated that the Auto Rickshaw proceeded towards Borivali Railway Station and that on the way, the Auto Rickshaw stopped near a wine shop, as the accused wanted to purchase alcohol. She has alleged that when co-accused – Vicky got down from the Auto Rickshaw, she called her friend – Govil on his mobile and informed him, that she was in problem and he should come to the Borivali Petrol Pump. She has stated that she disclosed call made by her, to the Applicant. She has further stated that after purchasing alcohol, co-accused – Vicky came back to the Auto Rickshaw and that when the Auto Rickshaw was going towards Goregaon, she saw Govil and Prakash on a motor cycle. She has stated that she tried to call out to them, however, they could not hear her. She has stated that co-accused – Vicky asked the rickshaw driver to speed up the rickshaw. She has further stated that when she tried to call up Govil, the Applicant pulled the mobile from her hand; then the Applicant pressed her nose, pursuant to which co-accused – Vicky forcibly made her to consume alcohol. She has stated that thereafter, she was taken to a lodge at Goregaon; where co-accused – Vicky got down from the rickshaw and asked the watchman for a room, however, the watchman refused. She has stated that pursuant thereto, the rickshaw was taken towards Dahisar. According to the prosecutrix, the rickshaw proceeded towards

Indiranagar Colony, Dahisar (W), Mumbai. She has alleged that both the accused got down from the rickshaw and pulled her towards the BMC office, at Dhobighat. She has alleged that the Applicant undressed her and sexually assaulted her and thereafter, co-accused – Vicky also sexually assaulted her. She has further stated that she tried to rescue herself, however, was unable to do so. She has further stated that after the sexual assault, she had pain in her abdomen. She has stated that the Applicant and co-accused – Vicky threatened her with dire consequences, if she disclosed the incident to any person. According to the prosecutrix, at about 6.15 a.m. she came home and went to sleep and did not disclose the incident to her mother, despite the fact, her mother asked her, where was she during the night. She has stated that when Govil called her at around 10.45 a.m., she asked him to come home. She has stated that she disclosed the incident of sexual assault by the Applicant and co-accused – Vicky, pursuant to which Govil disclosed the same to her mother. It appears from the record, that the prosecutrix's statement was recorded on 05.05.2016 and the FIR was registered on 06.05.2016. The prosecutrix was taken for medical examination. The history given by the prosecutrix is consistent with the statement. Although, learned counsel for the Applicant vehemently argued and submitted that the statement of the prosecutrix that she was sexually

assaulted by the Applicant defies logic and that there are several inconsistencies in her statement, her mother's statement and Govil's statement, *prima facie*, I do not find any merit in the said submission advanced by the learned counsel for the Applicant. The prosecutrix was about 16 years of age at the relevant time. There is nothing on record to show any reason for the prosecutrix to falsely implicate the Applicant. It appears that the Applicant had taken the prosecutrix and had forcibly administered alcohol to her, after which she was sexually assaulted. The incident was disclosed by the prosecutrix immediately on her return home to Govil and thereafter, her mother, after which the FIR was lodged.

6. Considering the material on record, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected.

7. 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.

(REVATI MOHITE DERE, J.)