

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

CRIMINAL BAIL APPLICATION NO. 296 OF 2017

Deepak Harischandra Khedekar.	... Applicant.
Versus	
The State of Maharashtra & anr.	... Respondents.

Mr. S.S. Butala i/b. S.S. Butala & Associates, advocate for Applicant.

Mrs. P.P. Shinde, APP for State.

Respondent No. 2 in person present.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : MARCH 30, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State.

2 This is an application under section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 20/8/2016 in

Crime No. 176 of 2016 registered at Navghar Police Station for offence punishable under section 354, 376(f) read with section 34 of the Indian Penal Code and Sections 4, 6, 8, 10 and 18 of the Protection of Children from Sexual Offences Act, 2012. The investigation is completed and charge-sheet is filed. The applicant herein happens to be the step-father of the first informant/victim.

3 It is the case of the prosecution that on 20/8/2016 the victim Ms. X had informed her good friend Mihir that she is being sexually abused by her step-father i.e. the present applicant since 2005. It is admitted position that her mother has divorced from her biological father in 2004. Thereafter, her mother had married the present applicant on 1/1/2005 and since then, she and her mother were residing with the present applicant. She has step-brother who is aged about 8 years old.

4 Being enraged by the disclosure statement of the victim, her friend Mihir had given a call on Child Helpline No. 1098. The child helpline had immediately taken action. Neha Pednekar working with Yuva child line had contacted Mihir on his cell phone number. He had called her near McDonald at Mulund(West). On 29/6/2016 Neha Pednekar and her associate Firoz Painter had been to McDonald, where they met Mihir and the victim. There the victim had disclosed her trauma to Mrs. Neha Pednekar. She had also disclosed to her that she had apprised her mother of the conduct of her step-father. The grievance had fallen on deaf ears. Hence, the victim had agreed to lodge FIR. Neha Pednekar had given her time to think over whether she wants to approach the police. Neha and Firoj Painter had also visited the house of the victim. They had met the parents of the victim. They had also talked to the applicant. Finally on 20/8/2016, the victim lodged report, on the basis of which Crime No. 176 of 2016 is registered. The charge-sheet is filed.

5 The victim in her first information report had also narrated the manner in which she was sexually abused. That she was threatened by the applicant. She had also disclosed that time and again she had apprised her mother of the sexual abuse meted out to her by her step-father. Her mother had not supported her and asked her to maintain silence and only when it had become unbearable, she had disclosed it to her friend who had immediately informed Child Helpline. The prosecution was initiated against both the parents of the victim. They were arrested. The mother of the victim namely, Kalpana Khedekar was enlarged on bail.

6 Thereafter on 16/11/2016, statement of the victim was recorded under section 164 of the Code of Criminal Procedure, 1973. In her statement under section 164 of the Code of Criminal Procedure, 1973, the victim had resiled from her earlier statement

and had disclosed to the Magistrate that her step-father used to be a strict disciplinarian and did not like the victim remaining outdoors after 7 p.m. She was made to write 500 times that she would return home within time. If she was seen talking to her friend on the road, he used to assault her. He did not like her talking to boys. At times he used to lock her in the room. The victim had expressed her grievance about the same and one day she had decided to teach a lesson to her parents and therefore, has initiated prosecution against them. She had disclosed to the Magistrate that she regrets lodging report against her father. That it is false complaint and she does not desire that her parents should be punished for being strict with her.

7 In the course of investigation, the statement of Mihir was recorded he had disclosed to the police that he was a good friend of the victim. That the victim had disclosed to him that her father is sexually abusing her. According to him, her step father had asked the

victim to stay away from Mihir. He had threatened her of dire consequences and therefore, they were not meeting each other for two years. In April, 2016, departed friends had met on social media i.e. instagram. The victim had asked him to meet her. He was shocked to see that she was depressed and therefore, he enquired with her. She had then disclosed to him that her father is stalking her and keeps a watch on her. She had also disclosed that she is being sexually abused by her father. He had decided to help his friend in distress. He finally got helpline No. 1098. He contacted on the cell phone. He talked with Neha Madam. That the victim was in double mind as to whether she should lodge the report lest it would bring disrepute to her family. That the mother of the victim was emotionally blackmailing her and insisted upon her not to lodge FIR. On 16/8/2016 father of the victim i.e. the present applicant had once again sexually abused the victim and threatened her that she shall

not lodge FIR and therefore, 20/8/2016 Mihir had accompanied the victim to the police station and they lodged report.

8 The statement of Neha Pednekar also shows that she had summoned the applicant to her office and had confronted him with the allegations levelled against him. According to her, he had admitted the allegations and had further admitted that he could not resist himself when he has overpowered by sexual desire. It is an admitted position that Neha Pednekar is not a police and the said admission was made prior to registration of an offence. Hence, it may amount to extra judicial confession.

9 This Court had felt the necessity of enquiring with the survivor personally only because she had stated on oath in her statement under Section 164 of the Code of Criminal Procedure, 1973 that she had lodged the report only to teach a lesson to the applicant. This

Court had also taken note of the fact that the statement under section 164 of the Code of Criminal Procedure, 1973 was recorded after the mother of the victim was enlarged on bail by the Special Court. At the same time, the learned Counsel for the applicant had made a statement that filing of such cases is rampant and hence, the wisdom had prevailed over survivor and she had stated the truth before the Magistrate. The wife of the applicant happens to be the biological mother of the survivor. She has been hostile to the victim.

10 After interviewing the victim and taking her into confidence, this Court is convinced that the statement under section 164 of the Code of Criminal Procedure, 1973 was given under pressure and coercion and that she had retracted/resiled from her earlier statement only to save the family. The survivor is not residing with her mother at present. It is in these circumstances that the statement of the

victim, Neha Pednekar, Mihir has inspired the confidence of the Court.

11 Taking into consideration heinousness of offence committed by the applicant, this Court is of the opinion that the applicant does not deserve to be enlarged on bail.

12 The application being sans merits stands rejected and disposed of accordingly.

13 Copy of this order be sent to the Special Judge under P.O.C.S.O. Act, Gr. Mumbai seized with POCSO Case No. 445 of 2016.

(SMT. SADHANA S. JADHAV,J)