

Anand

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

BAIL APPLICATION NO.332 OF 2017

Tausif Gulam Mohammed Azami .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.A.B.Bhoir i/b. Mr.N.D. Deboo, Advocate, for the Applicant
Mr.A.Patil, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.08.2017

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.I-117 of 2016 registered with the Ambarnath Police Station, Thane, for the alleged offences punishable under Sections 363, 376 of the Indian Penal Code and under Sections 3 & 4 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the Applicant submits that the Applicant and the prosecutrix were in love with each other and that the prosecutrix on her own accord accompanied the Applicant. He relied on

the statement of the prosecutrix which is on page No.19 of the Application.

4. Learned APP opposes the Application. He submits that the prosecutrix was about 15 years of age at the relevant time. Hence, consent of the Applicant was immaterial.

5. Perused the papers, in particular, the statement of the prosecutrix. It appears that the prosecutrix was about 15 years and the Applicant was about 20 years, at the time of the alleged incident. According to the prosecutrix, for about five months prior thereto, there was an affair between the two i. e. her and the Applicant and that none of the family members were aware of their relationship. She has further stated that the Applicant has professed his love for her and they would meet often. She has further stated that on 09.04.2016 at about 7.00 p.m., they met at Ayyappa temple. She has stated that although, she had disclosed at home that she was going to her friend's house, she had gone alongwith the Applicant to Chinchpada. She has stated that when her mother called her, she disclosed that she was with her friend when in fact, she was with the Applicant. She has stated that the Applicant disclosed to her that if her parents permit, he would get married to her

and had physical relations with her. She has stated that the Applicant had not troubled her thereafter. No doubt, considering the age of the prosecutrix, consent is immaterial. The Applicant is in custody since April, 2016. Investigation is complete and charge-sheet is filed. However, in the peculiar facts of this case, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

ORDER

- (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 report to the investigating officer of the concerned police station on the **1st Monday of every month** between **10.00 a.m. to 12.00 noon** initially for a period of one year till the conclusion of the trial;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant/prosecutrix, 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.

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

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.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)