

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 339 OF 2017**

Bashir Dilawar Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Umesh R. Mankapure for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

ASI Mr. D. S. Karande from Shirol Police Station, Kolhapur, is present

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 2nd MAY, 2017

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 114 of 2016 registered with the Shirol Police Station, Kolhapur, for the alleged offences punishable under Sections 376, 506, 323 of the Indian Penal Code and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act.

3. The complainant is the mother of the prosecutrix. Learned Counsel for the applicant submitted that the relations, if any, between the applicant and the prosecutrix were consensual. He submitted that the prosecutrix was above 16 years of age at the relevant time. He further submitted that there is delay in lodging the FIR, which shows that the relations between the applicant and the prosecutrix were with consent.

4. Learned A.P.P opposed the application. He has tendered the DNA report. The same is taken on record. He submitted that the DNA report is positive and shows that the prosecutrix was carrying the applicant's child.

5. Perused the papers. According to the prosecutrix, the applicant committed forcible sexual intercourse with her on 31st January, 2016 and thereafter sometime in March, 2016. She has stated that as she was not keeping well, she was taken to the doctor, where it was disclosed that she was pregnant. After the said disclosure was made on 22nd July, 2016, the FIR was lodged on 27th July, 2016. According to the prosecutrix, the applicant committed forcible sexual intercourse with her, as a result of

which, she became pregnant. She has also stated that the applicant had threatened her with dire consequences, if she disclosed the said incident to any one. According to the prosecutrix, the applicant was working as a Contractor in the said area and had also done some work in her house. The applicant was about 31 years of age at the relevant time and the prosecutrix was aged 16 years and 8 months. Because of the threats given by the applicant, the prosecutrix did not disclose the incident to her family members. The prosecutrix has delivered a child. The DNA report shows that the applicant is the father of the child.

6. Considering the peculiar facts of the case, this is not a fit case to enlarge the applicant on bail. Hence, the application is 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.