

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

CRIMINAL BAIL APPLICATION NO.344 OF 2017

Mehmoodali Shafatali Sayyed

...Applicant

Versus

The State of Maharashtra

...Respondent

Smt. Naima Shaikh i/b. Mr. Khan Abdul for the applicant.

Smt. J. S. Lohokare, APP for the respondent – State.

PI Revale, Unit – 4, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 19 JULY, 2017

P.C. :

1. The applicant is seeking bail in connection with C. R. No. 212 of 2015 registered with Wadala Police Station, Mumbai for offence punishable under section 363 of IPC and C. R. No.684 of 2014 registered with Wadala T.T. Police Station, Mumbai for offence punishable under sections 302, 201 of IPC. The investigation was thereafter transferred to DCB CID then FIR was registered as C.R. No. 8 of 2016 and the provisions of sections 302, 377, 363, 201 read with 34, 120B of IPC were invoked. The offence was also registered under sections 4, 8, 12 of POCSO Act.

2. It is the prosecution case that the victim was missing from house and missing complaint was lodged with Wadala Police Station. The child was aged about 6 years was missing from the house. The body of child was traced about 70 days thereafter in decomposed state. The offence was registered. The investigation was conducted by the local Police Station which was subsequently transferred to DCB CID. The statement of witnesses were recorded. Three persons were arrested in this crime. The applicant was arrested on 16th January, 2016. The prosecution is relying upon the statement of witness who had seen the accused alongwith victim child on the date of incident. On completing investigation, the chargesheet has been filed.

3. Learned advocate for the applicant submitted that there is no evidence to involve the applicant in the said crime. It is submitted that the investigating authority is relying upon the statement of witness viz. Pappu Jayatri Singh which was recorded on 20th January, 2016. The incident had occurred on 13th October, 2015. It is submitted that the statement was recorded belately. It is difficult to believe that the witness would remember the identify of applicant and child. It is further submitted that in any case the said witness

has not identified the victim even by way of photographs as dead body was found after 70 days in decomposed state. It is submitted that test identification can not be accepted. The parade was conducted on 22nd February, 2016. It is further submitted that other witness whose statement was recorded viz. Moses Rao Parli has not identified the applicant in the identification parade. Even his statement was recorded on 20th January, 2016. It is submitted that the prosecution is relying upon the statement of one Shahjad Abdul Khalil who is alleged to be the reporter. It is submitted that the said witness allegedly knows the applicant and had seen applicant along with child. It is submitted that the statement of the said witness was recorded on 20th January, 2016. The witness was aware about the incident of missing of child, the said witness could have approached the police for disclosing about the said incident at the earlier point of time. Even after dead body of child was recovered the statement of the said person has been recorded after a month thereafter. It is therefore submitted that the evidence of the prosecution at the most about last seen together which is also weak in nature cannot be accepted.

4. Learned APP strongly opposed the application for bail. It is

submitted that there is sufficient evidence to show involvement of the applicant. Reliance is placed on statement of witnesses referred to herein above. It is also submitted that one of the witness has stated that the accused used to consume drug at a particular place and the body of the child was also found at the said place. It is, therefore, submitted that the circumstances clearly establish involvement of the applicant in the said crime.

5. After hearing the submissions of both parties and going through chargesheet, it is apparent that the evidence collected against the applicant is of last seen with the victim child. One of the witness has not identified the applicant whose statement has been recorded belately on 20th January, 2016. The identification parade of person who identified applicant was conducted belately. The applicant was already in custody from date of his arrest. The identity of victim child is not establish qua the said witness, as to the child in custody of applicant is the same victim child. The motive for crime is not stated. It is further noted that the witness who is allegedly Journalist whose statement was also recorded belately on 20th January, 2016 did not come forward at the earlier point of time. The statement was recorded even a month after body of the deceased was

found. The other circumstances relied upon by the prosecution were not cogent to establish involvement of applicant. The charge under section 377 and charge under provisions of POCSO Act was added on the basis of the statement of accused which has no legal sanctity. The chargesheet has been filed. The case for bail is made out. Therefore, I pass following order;

:: ORDER ::

- (i) Bail Application No.344 of 2017 is allowed.
- (ii) The applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only.) with one or more sureties in the like amount.
- (iii) The applicant is directed to report to Wadala TT Police Station, Mumbai once in a month on the first Friday of the month between 11.00 am to 1.00 pm till conclusion of the trial.
- (iv) Applicant shall not tamper with the evidence.

[PRAKASH D. NAIK, J.]