

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

CRIMINAL BAIL APPLICATION NO. 384 OF 2017

Banti Samir Ghosh @ Paul Rodrix. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Ms. Nazneen Khatri i/b. Raeesuddin, advocate for Applicant.

Ms. Veera Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 24, 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 in Crime No. 367 of 2016 registered at Goregaon Police Station for offence punishable under section 363, 376 of the Indian Penal Code read with Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 23/8/2016 Mrs. Rupali Reddy lodged a report at the police station alleging therein that her daughter aged about 13 years old had left house for tuition and had not returned home. She has suspected that her daughter had been kidnapped by some unknown person. On the basis of her report Crime No. 367 of 2016 was registered for offence punishable under section 363 of the Indian Penal Code.

4 In the course of investigation, statement of the victim was recorded on 25/8/2016. She was apprehended by the lady police in civil dress in a shopping mall at Andheri on 25/8/2016. The victim had disclosed to the police that she had met the applicant on social media i.e. insta-gram. They used to chat. They had become good friend. Thereafter, they had started meeting each other. On 22/8/2016 she was about to leave for her tuitions and at that time, she had received phone call from the present applicant who had asked her to meet him. Thereafter, they had gone for a ride on the motor

cycle of the applicant. They had then been to Manori by boat. They had visited Sunshine resort. At the hotel, her name was shown as Shraddha Hareshwar Pawar. The pancard of the victim was shown – which indicated the date of birth as 22/11/1992. The statement of manager shows that the girl had muffled her face at the time of check-in at the hotel. The manager has further disclosed that the couple had gone out in the evening and returned at 8 p.m.

5 The applicant had proposed her to have sexual intercourse. She had denied the same. However, he had forced her to have sexual intercourse with him. For two days she was in the company of the present applicant and was finally apprehended by the lady police in a mall.

6 On 24/8/2016 the victim went to the house of Rajdeep Mewada under the pretext of temporary arrangement till she gets a room. On 25/8/2016 she requested the sister of Rajdeep Mewada to accompany her for shopping- when she was apprehended.

7 The survivor had in fact used some other pan-card. The conduct of the survivor clearly indicates that she accompanied the applicant voluntarily.

8 The learned Counsel for the applicant submits that the victim had accompanied the applicant voluntarily. She had attained the age of understanding. When they had been to hotel at Manori, there was no resistance and instead the victim had checked into the hotel voluntarily. She had disclosed to the doctor that she had consumed beer alongwith the present applicant and thereafter, had sexual intercourse with the applicant. It is also submitted that the victim had chosen to remain in the company of the applicant and had not gone home and therefore, it cannot be said that the offence under section 363 and 376 of the Indian Penal Code is made out.

9 The learned APP submits that the date of birth of the present applicant is 8/8/2003. The incident is of August, 2016. The victim

was hardly 13 years old of age and that she had not attained the age of understanding and therefore, her consent cannot be taken into consideration. It is also submitted that this would be a case of statutory rape. In fact, there is no allegation of coercion or forcible sexual assault.

10 Upon perusal of the papers of investigation, it rather appears that the victim had gone voluntarily alongwith the applicant and had not contacted her mother from 22nd August, 2016 to 25th August, 2016. However, taking into consideration the age of the victim at the time of the incident, she had hardly completed 13 years, the applicant is not entitled to be enlarged on bail.

11 However, upon considering the material on record, this Court is of the opinion that the trial needs to be expedited. Hence, the Additional Sessions Judge, Borivali Division (POCSO) seized with the Special Case No. 346 of 2016 is requested to make an endeavour to

expedite the trial as far as possible and conclude the same within 3 months from the date of framing of charge.

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

(SMT. SADHANA S. JADHAV, J)