

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.511 OF 2017

Siraj Babu Shaikh ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Ms.Padma S.Shelatkar, Advocate for the Applicant.

Ms.P. P. Shinde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.476 of 2016 registered with Police Station, Pawai for offences punishable under Sections 376, 376(2)(n), 377, 323, 363, 504, 506 of the Indian Penal Code as well as under Sections 4,8 and 12 of the Protection of Children from Sexual Offences Act, 2012, by this application, is praying for his release on bail during pendency of the trial against him.

2 Heard the learned Advocate appearing for the applicant/accused. She argued that the applicant is behind bars for more than one year. It is further argued that the investigation of the crime in question is complete and the applicant is permanent resident of Mumbai and as such, he is not likely to

abscond. The learned Advocate further argued that even the statement of Dilip Mhatre recorded by the Investigator indicates that the alleged victim of the crime in question was not child at the time of commission of alleged offence. The learned Advocate further placed reliance on Pan Card as well School Leaving Certificate of the First Informant to demonstrate that she was more than 18 years of age at the time of commission of the incident in question. With this, the learned Advocate by referring to the FIR as well as photographs of the couple argued that the First Informant as well as the applicant were deeply in love with each other and the applicant is falsely implicated in the crime in question.

3 The learned Additional Public Prosecutor opposed the application by submitting that during the course of investigation Birth Certificate of the First Informant is collected by the Investigator. It shows that the First Informant was born on 12/03/1999 and, therefore, she was child at the time of commission of the alleged act.

4 I have carefully considered the rival submissions and also perused the entire charge sheet.

5 Statement of the First Informant, who is alleged victim *prima facie*, indicates that she was having love affair with the

present applicant. Several photographs of both of them are placed on record which shows that they were sharing intimate relationship.

6 During the course of investigation, statement of owner of Sagar Farm House, where the alleged incident took place, is recorded by the Investigating Officer. This witness has stated that he had collected Pan Card of the First Informant, which is showing her date of birth as 26/07/1988. Along with instant application, photo copy of Pan Card of the First Informant is also produced on record. It show her date of birth as 26/07/1998. Leaving Certificate issued by Mapkhan High School and Junior College wherein the First Informant appears to have studied up to S.C.C. examination shows the date of birth as 26/07/1998. School Leaving certificate issued by S.M.Shetty High School and Junior College where the First Informant studied up to 12th Std shows her date of birth as 26/07/1998. This material indicates that the First Informant might be more than 18 years of age when the alleged incident dated 11/10/2016 took place.

7 Statement of the First Informant as indicated in foregoing paragraphs reveals that she and the present applicant were in love with each other. She herself had accompanied the present applicant on 11/10/2016 by responding to his call and went at various places with him. Statement of the owner of the

Sagar Farm House shows that the couple got a room after furnishing their ID proofs.

8 In the wake of this evidence against the present applicant, after completion of investigation his pre-trial detention is not warranted. As such, the Order :

- (i) The application is allowed.
- (ii) The applicant/accused in Crime No. 476 of 2016 registered with Police Station, Pawai for offences punishable under Sections 376, 376(2)(n), 377, 323, 363, 504, 506 of the Indian Penal Code as well as under Sections 4,8 and 12 of the Protection of Children from Sexual Offences Act, 2012, is directed to be released on bail on his executing P.R. Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant shall not tamper with the prosecution evidence.
- (iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

- (v) The applicant should not contact first informant or her relatives in any manner.

(A.M.BADAR J.)