

Anand

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

BAIL APPLICATION NO.770 OF 2017

Bhushan alias Bacchi Kamalprasad Jaiswal .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Ms Asha Ram Shukla, Advocate, for the Applicant

Ms A. Malhotra, APP, for the Respondent No.1 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 12.09.2017

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.5 of 2016 registered with the Kurar Police Station, Mumbai, for the alleged offences punishable under Sections 376D, 376(2)(i), 363, 328, 506(2) of the Indian Penal Code and under Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act (for short 'POCSO').

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. She submits that

the prosecutrix in her statement dated 14.01.2016 has made allegations of sexual assault only as against accused No.1 – Yogesh. She further submitted that after almost two and half months, the prosecutrix in her statement dated 30.03.2016 has made allegations of sexual assault even by the Applicant and co-accused – Gyanchand.

4. Learned APP opposes the Application. She submits that the Applicant has an antecedents i. e. an offence punishable under Section 354 of the Indian Penal Code.

5. Perused the papers, in particular, the statement of the prosecutrix aged 15 years. The Complainant is the mother of the prosecutrix. She has alleged in the complaint dated 05.01.2016, that her daughter went missing from home on 03.01.2016. Pursuant thereto, an offence was registered as against unknown person alleging an offence punishable under Section 363 of the Indian Penal Code. Later, the prosecutrix was found in the custody of accused No.1 – Yogesh on 12.01.2016 and was brought back. The prosecutrix in her statement dated 14.01.2016 has stated that the accused No.1 – Yogesh and she were in love, pursuant to which, both of them decided to leave their house. She has alleged that on the pretext of marriage, accused No.1 –

Yogesh had physical relations with her. In her statement dated 30.03.2016, the prosecutrix has in detail, set out the manner in which she was sexually assaulted even by the Applicant and co-accused – Gyanchand. She has stated that she left the house on her own accord, as accused No.1 Yogesh had promised marriage, pursuant to which Yogesh had physical relations with her on the pretext of marriage. She has alleged that on one occasion she was coerced by Yogesh to consume alcohol, pursuant to which, Yogesh sexually assaulted her. She has stated that when she woke up in the morning, she found the Applicant and co-accused – Gyanchand next to her and found herself undressed below her waist. She has alleged that the Applicant disclosed to her that they were permitted by Yogesh to have physical relations with her. She has further stated that when she questioned Yogesh about the same, Yogesh stated that the Applicant and Gyanchand were his friends and that she will have to keep physical relations even with them, if she wanted to marry him. The Applicant has been identified in the Test Identification Parade by the prosecutrix, considering that she had disclosed the name of the Applicant in her supplementary statement as 'Bachhi'. The statement of Sachin Ashok Mungekar shows that the Applicant and accused No.1 – Yogesh had disclosed to him that they had physical relations with a girl.

6. Considering the material on record, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands 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.)