

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 708 OF 2016

Domnic Richard Rodrigues	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Niranjan Mundargi i/b. Mr. Vikram Sutaria, for the applicant.

Ms. Veera Shinde, APP, for the State.

Mr. Tanaji Telvekar, API, MIDC Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 16th January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant is arrested on 6.10.2015 in Crime No.525 of 2015 registered at MIDC Police Station for the offence punishable under Section 354 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act.

2. It is the case of the prosecution that one person, i.e. Vijay Shetty is working with a NGO which runs the “Childline” for protection of children from sexual abuses who informed the police that he had received a call from one girl who was in need of help and protection at Shabbir Niwas. The complainant had then contacted the Secretary who informed him that she was adopted by the applicant when she was 9 years old. When

she was in VIth Std. her father i.e. the present applicant had sexually abused her and she had to undergo the said trauma till 9.9.2015 and finally she decided to approach the Childline.

3. Perused the papers of investigation. It appears that in the year 2006, the mother of the prosecutrix had died as she was diagnosed with HIV Positive. Her mother had died in the Holy Spirit Hospital at Andheri. Since there was nobody to look after the child, the child was abandoned in the compound of Secret Heart Parist at Andheri. She was taken into the Institution of Fatima Mata Sadan on 31.5.2006. The Supervisor of the said protective home had observed unnatural behaviour of the prosecutrix. She had received several complaints from the inmates also and, therefore, the Supervisor had taken her into confidence and upon enquiry had found that she had an unwarranted and unnatural behaviour. She was then adopted by the applicant and his wife. The wife of the applicant was acquainted with the mother of the prosecutrix. The Supervisor of Fatima Sadan had informed her about the abnormal behaviour of the child. However, the wife of the applicant was hopeful that she would improve her behaviour after she gets love and education.

4. The Supervisor of the said protective home had asked the

prosecutrix to write her life history in her own words. Accordingly, she had written the life history. Perused the statement written in the handwriting of the prosecutrix. She has admitted that she used to do all dirty things. It appears that she was inherently abnormal and had sexual instincts right from her childhood, in all probabilities, because of the environment and atmosphere where she lived and the conduct of her deceased mother.

5. Be that as it may, on the date of lodging of the report, the victim was about 17 years old. She had not disclosed the act of the applicant to the Supervisor of the protective home and has complained about it after a considerable lapse of time. The statement of the victim on the basis of which crime is registered, does not appear to be truthful and therefore, does not inspire confidence of this Court. The applicant has been in jail for almost 15 months. The investigation is completed and charge sheet is filed. Hence, the applicant deserves to be enlarged on bail.

6. The Investigating Officer is present in the Court. The learned APP on the basis of the instructions submits that the prosecutrix is lodged in Asha Sadan at Dongri although she has attained majority, in all probabilities, because of her abnormal behaviour.

7. Taking into consideration the papers of investigation, more particularly the history written by the prosecutrix herself and the statement of the Supervisor of Fatima Mata Sadan, the applicant is entitled to be enlarged on bail.

6. The observations are restricted to an application under Section 439 of Cr.P.C. and the same shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii)** The applicant be enlarged on bail on his furnishing P.R. bond in the sum of Rs.15,000/- with one or more sureties in the like amount.
- (iii) The applicant shall not attend Asha Sadan at Dongri or contact the prosecutrix in any manner.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)