

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

CRIMINAL BAIL APPLICATION NO. 1043 OF 2017

Abdul Rahim Irshad Ali Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. R.S. Deshpande for the applicant.

Mr. H. Pethe, APP for the respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3 JULY 2017

P.C. :

1. The applicant is arrested on 3rd September, 2017 in connection with C.R. No.244 of 2015 registered with Trombay Police Station. The offence was initially registered under section 363 of IPC. Subsequently, the charge under section 376 of IPC and 4, 8 and 12 of POCSO Act were added.

2. The brief facts of prosecution case are that between 12 September, 2015 to 16th September, 2015, the applicant/accused took away the victim under pretext of marriage and committed sexual intercourse with her. The statement of victim was recorded by the police. In the said statement, it is stated that the accused had

sexual intercourse with her without her consent and also solemnized marriage with her inspite of knowing that she is a minor.

3. Learned advocate for the applicant submitted that there was love affair between the applicant who is aged about 24 years and the victim who was more than 17 years. He submitted that the applicant had solemnized marriage with the victim and there was no intention to exploit her. He submitted that the applicant is in custody from 3rd September, 2017 and the charge has been filed.

4. Learned APP opposed the application for bail. He submitted that the victim was minor at the time of the alleged incident. Even assuming that she has consented for the physical relations or the marriage, it cannot be said to be consent within the meaning of law. He submitted that if the contention of the applicant is accepted, it would frustrate the object of the POCSO Act.

5. I have perused the documents on record, the victim was 17 years and 7 months old at the time of incident. Although in the FIR, it is mentioned that the applicant had physical relationship with her without her consent and that the marriage was solemnized inspite of knowing that she was minor. Even in the medical examination, the

history was given to the medical officer and the statement of the complainant / victim is recorded. In the said statement/ medical history, she stated that the victim met accused on 10 September, 2015 and both of them boarded the train of Kolkatta. On 12 September, 2015, they reached Kolkatta at 2.00 pm and went to Rahim Shaikh's room at Bhojpur, Kolkatta. They got married on the same day in the presence of Moulana and both of them stayed together from 12 September, 2015 to 17 September, 2015. During this period, they had sexual intercourse with the consent of the victim. On 17 September, 2015, the police arrived and she was brought to Mumbai. She also stated that there is no history of physical assault during the said period.

6. Learned APP also submitted that the applicant was absconding after the incident and he was arrested on 3rd September, 2016.

7. Learned advocate for the applicant submitted that the applicant was residing in Kolkatta in his village and when he came to Mumbai he was arrested.

8. It is true that the victim is minor and aged 17 years and 7 months at the time of the incident, however it is stated by her that

she had accompanied the applicant / accused voluntarily. Taking into consideration, the history narrated by the victim and the submissions advance by both the parties, bail can be granted to the applicant.

9. Hence, I pass the following order;

ORDER

- (i) Bail Application No.1043 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 Only.) with one or more local sureties in the like amount.
- (iii) The applicant is directed to report Trombay Police Station, Mumbai in a week on every Saturday between 11.00 am to 1.00 pm till further orders.
- (iv) The applicant is directed to furnish his residential address to the investigating officer.
- (v) Bail Application stands disposed of.

[PRAKASH D. NAIK, J.]