

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

BAIL APPLICATION NO. 1050 OF 2017

Shahrukh Mohd. Irshad .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Ms.Anjali Awasthi, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 20, 2017.

P.C. :

This is an application for bail in connection with C.R. No.I-193 of 2016, registered with Hill Line Police Station, Ulhasnagar, District - Thane. The offences were registered under Sections 376, 363, 366 read with 34 of the IPC and Sections 3(a) and 4 of the POCSO Act.

2 The prosecution case is that the victim girl was missing from the house and it was learnt that she was kidnapped by the applicant. The missing complaint was lodged with the police station on 4th June, 2016. The offence was initially registered under Section 363 of IPC. It is further alleged that the

applicant and the victim went to Lanja, District-Ratnagiri and stayed together. The police had received the information, went to Lanja and the applicant was arrested. Both the applicant and the victim were brought to the concerned police station and subsequently the charges under Section 376 of IPC and POCSO Act were added. The statement of victim was recorded on 16th June, 2016. The victim was aged about 17 years and 5 months at the time of recording her statement. The applicant and the victim had left together on 4th June, 2016 and they were traced by the police on 16th June, 2016.

3 The applicant was arrested on 17th June, 2016. Investigation is completed and the charge-sheet has been filed.

4 Learned advocate for the applicant submitted that the applicant and the victim was having a love affair. The victim had eloped with the applicant on her own will. It is submitted that although the victim was minor, she had sufficient understanding about the consequences of having relationship with the applicant – accused as she was aged about 17 years and 5 months at the time of incident. It is further submitted that the relationship was consensual and the victim herself had pursued the applicant to

join her and consented for leaving the house with the applicant and both of them had stayed at Lanja. It is further submitted that the statement of the victim recorded on 16th June, 2016 clearly states that she was a consenting party and she had affair with the applicant. It is submitted that the victim's statement was subsequently recorded on 4th July, 2016, which gives different version by impleading the applicant in the said crime and making allegations against him. The statement of victim was recorded under Section 164 of Cr.P.C. Learned APP submitted that the victim was minor at the time of incident. The applicant accused induced her by false promise of marriage and took the victim with him and had physical relationship with her. He further submitted that the statement of the victim recorded under Section 164 of Cr.P.C. clearly states that the applicant had promised her that he will marry her and on the basis of said promise, the applicant had physical relationship with her. It is submitted that the victim has also stated that she learnt that the applicant will not marry her and, thereafter, the brother of the victim came to Lanja and she was brought back to her residence. Learned APP thereafter submitted that the applicant has committed serious offence and bail should be refused to him.

5 I have perused the charge-sheet, the statement of victim recorded on 16th June, 2016 and 4th July, 2016. The applicant and the victim had left house together on 4th June, 2016 and they stayed together at Lanja till 16th June, 2016. On perusal of the statement of victim recorded on 16th June, 2016, it is apparent that the victim and the applicant had developed a friendship and they were having a love affair. It is further stated that in January 2016 the victim and the applicant went to the house of the friend of the applicant and at that place both of them had physical relationship. It is further stated that on 1st June, 2016, the applicant-accused had visited the house of the relative of the victim where they had stayed during the vacation and was obstructed by the family member of the victim on apprehension that both of them may elope. Thereafter, also the victim used to speak to the applicant on telephone. On 4th June, 2016, she contacted the applicant from the mobile phone of her uncle. The applicant then met the victim and both of them ran away from the house of the relative of the victim. They went to Kalyan Phata and stayed in one lodge. Thereafter, both of them went to Lanja and stayed in the premises belonging to the friend of the applicant. They stayed together from 6th June, 2016 to 16th June, 2016 and had physical relationship. Thereafter, on 16th June, 2016, police

came and the applicant-accused was taken into custody. Taking into consideration the contents of the said statement, it is apparent that the victim had accompanied the applicant on her own willingness and there was no coercion at the instance of the applicant. It is also apparent that the victim had called the applicant on telephone and, thereafter, both of them met each other and went to Lanja. It is also clear that there was physical relationship between the applicant and the accused. The statement of victim was thereafter recorded on 4th July, 2016, wherein she has changed her version. However, in that statement also it is mentioned that there was an affair with the applicant and the victim, which was disclosed by her to all the family members. It is further mentioned that both of them went to Lanja and the applicant promised her that he would marry her and had sexual relationship with her. Thereafter, she learnt that the applicant would not marry her. It is further stated that the applicant had induced her to accompany him and she was taken to the aforesaid place. In any case, the contents of both these statements make it clear that there was an affair between the applicant and the victim. The relationship was consensual. No doubt in the statement recorded under Section 164 of Cr.P.C., the victim has varied her version. Although the victim was minor at

the time of the alleged incident, it can be seen that she was aged about 17 years and 5 months. The applicant is in custody since 17th June, 2016. The investigation is completed and charge-sheet is filed.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1050 of 2017 is allowed;

- (ii) The applicant is directed to be released on bail in connection with C.R. No.I-193 of 2016, registered with Hill Line Police Station, Ulhasnagar, District - Thane on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or more sureties in the like amount;

- (iii) The applicant is directed to report Hill Line Police Station, Ulhasnagar, District - Thane once in a month on first Saturday between 11:00 a.m. to 1:00 p.m., till further orders;

- (iv) The applicant shall not tamper with the prosecution evidence;
- (v) The applicant shall not enter within the area of the residential premises of the victim.
- (vi) The applicant is permitted to furnish cash security of Rs.25,000/- (Rupees Twenty Five Thousand) in place of surety for a period of four weeks from today;
- (vii) Bail Application stands disposed of accordingly;
- (viii) Parties to act on an authenticated copy copy of this order.

(PRAKASH D. NAIK, J.)