

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

CRIMINAL BAIL APPLICATION NO.1139 OF 2017

Farzana Shakil Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Smt. Shagufta M. H. for the applicant.

Smt. J. S. Lohokare, APP for the respondent – State.

PSI Nalawade, D. B. Marg Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 24 JULY, 2017

P.C. :

1. This is an application for bail in connection with C.R. No.19 of 2016 registered with D. B. Marg Police Station, Mumbai. The offences were registered under section 370(3), 372, 373, 376 read with 34 of IPC and under sections 3, 4, 5, 6, 7(1) (B) ITP Act as well as section 4 and 17 of POCSO Act.

2. The applicant was arrested on 15th January, 2016. Investigation is completed and chargesheet has been filed.

3. Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. It is further

submitted that the applicant is not the owner of the premises where the alleged activities were carried out. She further submitted that the prosecution case is that four women were found indulging in prostitution activities. They have not stated that they were forced to indulge in the prostitution. She submitted that the prosecution is relying upon the statement of one of victim girl namely Seema Gonsalvis. Her statement was recorded on 15th January, 2015, wherein her age was mentioned to be of 19 years and that she had voluntarily indulged into prostitution. It is submitted that subsequently one NGO had recorded her statement wherein she has changed her version. It is also pointed that ossification test was carried out subsequently where in her age is recorded to be between 16 to 17 years. It is submitted that other victim women who are major age have not stated that they were forced to indulge into the said activities. Learned advocate also pointed that the medical certificate indicate that there are no fresh injuries and it records old rupture reaching upto margin. It is therefore submitted that the allegations which are mentioned in the subsequent statement is not supported by any evidence. The applicant is in custody for a long period of time and chargesheet has been filed against the applicant.

4. Learned APP submitted that the applicant was conducting prostitution in the premises which was hired by her. It is submitted that victim girl Seema in her supplementary statement had stated that she was forced into activities and one person had committed sexual intercourse with her. It is further submitted that the statement of the said victim Seema was recorded under section 164 of Cr. P.C. wherein she has implicated the accused. It is further submitted that the statement ossification test of victim Seema was conducted and it was found to be within age group of 16 to 17 years and therefore she was minor at the time incident. It is submitted that in view of the age of the victim girl the provisions of section 370 of IPC as well as POCSO Act are applicable. It is therefore prayed that the application may be rejected.

5. Perused the documents on record. The statement of Seema Gonsalvis, victim girl was recorded on 15th January, 2015. She had stated her age to be of 19 years. It is also stated that she had indulged into the prostitution out of her own willingness. The applicant had therefore no reason to suspect that the victim is minor girl. However, in the subsequent statement recorded by NGO and the statement under 164 of Cr. P.C. the victim girl has challenged her

version. It is also pertinent to note that in the ossification test, it is opined that age of the victim girl appears to be between 16 to 17 years. In the medical report, it is stated that there is no evidence of fresh injuries over body of the victim girl. It refers to old rupture. The victim girl in her statement has stated that she had started indulging into these activities on 12th January, 2016 and the premises were raided on 15th January, 2016. The other victim women who were major by age has not implicated applicant in the crime. Their statements were recorded wherein they have not stated that they were forced to indulge in the prostitution. There are no antecedents against the applicant. The chargesheet has been filed. The applicant is in custody from 15th January, 2016.

6. Taking into consideration the aforesaid circumstances, bail can be granted to the applicant.

:: ORDER ::

- (i) Bail Application No.1139 of 2017 is allowed.
- (ii) The applicant is directed to be released on bail in connection with C.R. No.19 of 2016 registered with D. B. Marg Police Station, Mumbai on furnishing P.R. Bond in the

sum of Rs.25,000/- (Rupees Twenty Five only.) with one or more sureties in the like amount.

(iii) The applicant is directed to report the concerned Police Station once in a month on the first day of month between 11.00 am to 1.00 pm till further orders.

(iv) The applicant shall not tamper with evidence.

(v) The applicant shall attend trial Court on the dates of hearing of the case.

(vi) The applicant shall not enter within the jurisdiction of D. B. Marg Police Station.

(vii) The observation made in this order are only for considering this application for bail.

(viii) The application stands disposed of.

[PRAKASH D. NAIK, J.]