

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1317 OF 2017

Suresh Ramji Gupta ... **Applicant**

V/s.

The State of Maharashtra ... Respondent

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Mr.Navin R. Tiwari, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent/State.

Mr.D.R.Bhoi, PSI, Central Police Station Ulhasnagar, Than is present in person.

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CORAM : A.M.BADAR J.

DATED : 9th NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.I-115 of 2016 for offences punishable under Section 376(2)(j) of the Indian Penal Code (hereinafter referred to as 'IPC' for the sake of brevity) and under Section 4 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO' for the sake of brevity), by this application, is seeking his release on bail during pendency of the trial.

2 The learned Advocate for the applicant/accused has
pointed out the FIR and argued that the applicant himself

accompanied the prosecuting party to the police station. He argued that if the prosecutrix was a special child whose mental age is nine years 6 months, then she is able to understand the nature of act and therefore, Section 376(2)(j) of the IPC, is not applicable. He drew my attention to the spot panchanama and argued that considering the small house comprising of one room, it is not possible to commit the alleged offence in the said room in presence of other members of family. There is no documentary proof so far as the offence under POCSO is concerned. The applicant is behind bars since long and, therefore, he is entitled to be released on bail.

3 The learned Additional Public Prosecutor drew my attention to the FIR and statement of the prosecutrix as well as medical evidence and opposed the application.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet.

5 The crime in question is registered on the basis of report lodged by the mother of the victim female child who, according to the prosecution case, is 17 years old. The First Informant reported that her daughter, who is victim of the crime in question, is mentally retarded. She was subjected to medical examination and the report thereof is at record page No.113. This report of Government Medical College, Mumbai shows that the

victim female child is having mental age around 9 years and two months.

6 The First Informant – mother has reported that on 21/02/2016, her son Sandeep had gone outstation. In the night intervening 21/02/2016 and 22/02/2016, the daughter of First Informant, who is alleged victim of the crime in question, went out of house at about 1.00 a.m. for urinating. Despite lapse of sufficient time, the victim child did not return and, therefore, the First Informant started searching for her daughter and waited for her at the door of the house. The First Informant further reported that at about 2.00 a.m. her minor daughter returned and on returning she told her that the applicant took her in his house and committed rape on her.

7 It is seen from the FIR that on the next day of the incident, son of the First Informant returned and he took the First Informant as well as the present applicant to the police station. That is how the FIR came to be registered.

8 During course of investigation, statement of victim girl came to be recorded by the Investigator. She has stated that the applicant has taken her to his house and committed rape on her. Similar is her version in her statement recorded under Section 164 of the Code of Criminal Procedure. The minor female victim had

stated that at the time of incident in question wife and sons of present application were sleeping in the house.

9 During investigation, the minor female child subjected to medical examination wherein her hymen was found to be torn by the medical officer.

10 The spot panchanama shows that the spot of the incident which is house of the present applicant is a room having area of 8 feet x 6 feet. At this pre-trial stage, considering the minor age of the alleged victim of the crime in question, it is not possible to conclude that no such crime has alleged to be happened in such small area in presence of other members of the family. The victim has categorically stated that other members of the family were sleeping at the time of the incident. The incident allegedly took place on 2.00 a.m. of 22/02/2016. The version of the victim is duly corroborated by her medical examination.

11 Considering the nature of offence and the manner in which it was committed as well as mental growth of the minor female victim of the crime in question, no case for bail is made out.

12 The application is, therefore, rejected.

(A.M.BADAR J.)