

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO.1617 OF 2017**

**RIWAN @ ARIF NURUL HUQ SHAIKH                      )...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA                      )...RESPONDENT**

Mr.Ram Mani Upadhyay, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent - State.

**CORAM        :        A. M. BADAR, J.**

**DATE                :        14<sup>th</sup> NOVEMBER 2017**

**P.C. :**

1                The applicant/accused in Crime No.58 of 2017 registered with Police Station Wadala T.T., for offences punishable under Sections 377 and 506 of the Indian Penal Code (IPC) and under Sections 4, 6, 8 and 12 of the Protection from Children from Sexual Offences Act (POCSO Act), by this application, is seeking his release on bail during pendency of the trial.

2            Heard the learned advocate appearing for the applicant/accused. He drew my attention to the report of the Class Teacher of the applicant/accused dated 14<sup>th</sup> November 2013 reflecting weak academic performance of the present applicant/accused. By drawing my attention to the mark list of the present applicant/accused, the learned advocate argued that the applicant/accused had secured only few marks in subjects under examination. My attention is drawn to the assessment of the Intelligent Quotient of the present applicant/accused at the hospital run by Municipal Corporation of Greater Mumbai reflecting that the Intelligent Quotient of the present applicant/accused is in the range of 60-65. With this, it is argued that the applicant/accused is suffering from mild mental retardation and he is a young person and as such, he need not be kept in the company of hardened criminals. It is further argued that medical examination of the victim boy shows that there was no injury on his private part.

3           The learned APP opposed the application by contending that the ground so raised was not taken before the Sessions court and statements of witnesses as well as victim are disclosing the offence alleged.

4           The subject First Information Report (FIR) is lodged by the mother of the victim. The victim is 7 years old boy. The First Informant/mother came to know about the happenings with her son from the tutor. The victim boy had narrated the incident to his tutor, who in turn informed it to the First Informant/mother.

5           The case of the prosecution as reflected from the statement of the victim – male child aged about 8 years, his friend Lucky as well as from versions of the tutor and the First Informant is to the effect that the applicant/accused, the victim male child as well as his friend Lucky were residing in the same building. The applicant/accused, as alleged by the prosecution, used to take the victim male child to the terrace of their apartment. His friend

Lucky, under direction of the present applicant/accused, used to keep watch to see that nobody comes and if somebody comes, he used to give pre-arranged signal to the present applicant/accused. The present applicant/accused then used to indulge in carnal intercourse against the order of nature with the victim male child. This used to happen in the evening hours of every Sunday, as stated by the victim male child. On protest by the victim male child, the applicant/accused used to hit him on his head by his ring.

6           Weak academic performance or low Intelligent Quotient cannot be considered as an ailment suffered by a person. On the contrary, in the case in hand, it appears from the statement of the victim male child as well as other witnesses that in a planned manner the victim was used to be taken on the terrace of the apartment by keeping his friend Lucky as a guard and then there used to be frequent penetrative sexual assault on the victim male child.

7           Considering the nature of the crime, no case for bail is made out. The application is, therefore, rejected.

8           It is reported that the charge-sheet has already been filed. The applicant/accused is also a young person. In this view of the matter, at the request of the learned advocate for the applicant/accused, the learned trial court is directed to decide the concerned special case within a period of eight months from the date of receipt of this order.

9           Parties to act on authenticated copy of this order.

**(A. M. BADAR, J.)**