

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1713 OF 2017

Mr.Arif Mohd. Rahila ... **Applicant**

V/s.

The State of Maharashtra ... Respondent

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Mr.Pravin Patel, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 1st NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.302 of 2016 registered with Mata Ramabai Ambedkar Marg Police Station, Mumbai for the offences punishable under Sections 376 of the Indian Penal Code and under Sections 4,6,8 and 12 of the Protection of Children from Sexual Offences 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 argued that the alleged victim of the crime
in question is not residing where the applicant is residing and,
therefore, there is no question of tampering the evidence of the

prosecution by the applicant. He further argued that the alleged victim of the crime in question was playing nicely in front of her house on the day of alleged incident right from 4.30 p.m. till late evening and as such, it cannot be said that she was subjected to sexual violence. At the time of incident in question, the applicant was not present at the scene of occurrence and he had been to the mosque for offering *namaj*. The medical examination of the alleged victim of the crime in question shows that her hymen was found intact and as such, there was no sexual assault on the victim. The nail clippings of the applicant were not found to be having any evidence regarding the sexual assault on the victim child. For this purpose, the learned Advocate for the applicant/accused relied on the Chemical Analysis Report. It is further argued that in fact, the victim girl was under treatment of Saint George Hospital since long for lack of blood etc. and, therefore, there is no evidence against the applicant/accused in crime in question.

3 The learned Additional Public Prosecutor opposed the application by contending that statement of the victim of the crime in question shows complicity of the applicant/accused in the crime in question.

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

5 The offence allegedly took place on 02/12/2016. Statement of the female child, who is stated to four and half years of age came to be recorded on 03/02/2016. She has stated to the Investigator that when she had been to the shop for purchasing the chocolate, uncle having beard in the shop had inserted his finger in her vagina. Statement of Anita Waghela shows that the minor female victim of the crime in question has identified the present applicant as the person who had committed penetrative sexual assault on her. The minor female child was subjected to medical examination. Report of medical examination shows that there was abrasion of size 1 x 1 c.m. on left labia majora on medial aspect. Statement of witness named Diksha shows that there was sign of scratch marks on the vagina of minor female child, apart from swelling thereat.

6 Proof of mathematical precision is not required for proving a fact. Section 3 of the Indian Evidence Act requires yardstick of prudent person for holding a fact to be proved. It is well settled that for making out the offence of penetrative sexual assault, tearing of hymen is not at all required. What is required is slightest penetration. Similarly, it is equally well settled that in case of sexual assault on a female, the Court is required to consider the evidence of prosecution in broader probabilities by ignoring minor contradictions or variations as observed by the

Honourable Apex Court in the matter of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* reported in AIR 1983 SC 753.

7 In the result, no case for bail is made out. The application is rejected.

(A.M.BADAR J.)