

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

CRIMINAL BAIL APPLICATION NO. 1747 OF 2017

Shahrukh Yusuf Pathan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Manoj Badgujar for the applicant.

Ms. A. A. Takalkar, APP for the respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd AUGUST, 2017.

P.C. :

1. This is an application for bail in connection with CR No.I-19 of 2016 registered with Hill Line Police Station, Ulhasnagar. The offence was registered under section 376 of IPC and sections 4, 5 of POCSO Act.

2. The prosecution case is that the victim girl who is daughter of the complainant was missing from the house from 15th January, 2016. It was also noticed that the applicant / accused was also missing. The victim who was aged about 14 years and 6 months at the time of incident left the house alongwith the applicant / accused and they went to Aurangabad and resided at the house of brother of the applicant. At that place, the victim and applicant had physical relationship. They were traced on 18th January, 2016. The statement of the victim girl was recorded on 18th January, 2016. Her statement was also recorded under section 164 of Cr. P.C. on 12th February,

2016. In the said statement, it is stated that the accused is residing near the house of the victim girl. She does not know him personally. It is further stated that the accused informed her while she was playing in the front of the house, that he had some objectionable photographs of the victim and she should accompany him or he would inform about the same to her parents. On account of hearing, the victim girl accompanied the accused to Aurangabad where the accused had sexual intercourse with her.

3. The applicant was arrested on 21st January, 2016. The investigation is completed and the chargesheet has been filed. From the statement of the victim girl it appears that she had left with the applicant voluntarily on 15th January, 2016 and both of them went to Aurangabad and stayed together in the house of brother of the applicant. The victim has changed her version in the 164 statement which was recorded on 12th February, 2016.

4. The learned advocate for the applicant submitted that the applicant is aged about 20 years and he is being in custody since last 20 months. There are no antecedents against the applicant. It is submitted that there was friendship between the applicant and victim and the victim had accompanied the applicant voluntarily.

5. Learned APP submitted that the victim was minor and her consent is immaterial. The offence under section 376 of IPC and under sections 4 and 5 of POCSO Act is made out.

6. Considering the nature of the allegations, the statement of the

victim recorded on 18th January, 2016 and the other material on record including improvised version dated 12th February, 2016. Although the victim was minor she had accompanied the applicant and went to Aurangabad with him. The applicant is in custody from the date of arrest. The investigation is completed and the chargesheet has been filed. In these circumstances, bail can be granted to the applicant. Therefore, I pass following order;

:: ORDER ::

- (i) The applicant is directed to be released on bail in connection with CR No.I-19 of 2016 registered with Hill Line Police Station, Ulhasnagar on executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only.) with one or more sureties in the like amount.
- (ii) The applicant shall attend Hill Line Police Station once in a month on first day of month between 11.00 am to 1.00 pm till further orders.
- (iii) The applicant shall not approach the victim girl or other witnesses and shall not tamper with the evidence
- (iv) The applicant is permitted to furnish the cash security for a period of four weeks in lieu of sureties.
- (v) Application stands disposed of.

[PRAKASH D. NAIK, J.]