

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

BAIL APPLICATION NO. 1613 OF 2015

Abdul Razak Sattar Shaikh	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

.....
Mr.Omkar Nagwekar, Advocate for the Applicant.
Mrs.J.S. Lohokare, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 12, 2017.

P.C. :

The applicant is seeking bail in connection with C.R. No.I-34 of 2015, registered with Bazarpeth Police Station, Kalyan, District – Thane. The offence is registered under Section 376(2)(f) and 506 of IPC and Section 4, 6 and 8 of the POCSO Act.

2 The prosecution case is that the complainant noticed that on 25th January, 2015, the applicant-accused was misbehaving with the victim child aged about 12 years. The applicant is the husband of the complainant. The victim child was born from the first husband of the complainant. The complainant had obtained divorce from her first husband in the year 2008 and have married the applicant-accused in 2009. The complainant

was residing alongwith her children with the applicant. She used to go for work during the course of the day. On 25th January, 2015, she noticed that the applicant was moving his hand on the body of the victim. After noticing the same she shouted. The applicant tried to give excuses. The complainant took the victim in confidence and at that time the victim child told her that after the complainant was leaving the house for job, the applicant used to send the other children out of the house and he used to remove her cloths and move his hand on her body including private part. The complainant then took the victim to the doctor and thereafter lodged the FIR.

3 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case at the instance of the complainant since she intends to have divorce from the applicant. It is further submitted that the acts referred to by the victim were committed since last one year, however, the complaint was lodged on 26th January, 2015. He further submitted that the medical evidence does not indicate that there was any sexual assault on the victim. It is further submitted that the statements of neighbours recorded by the investigating officer are in the nature of hearsay and cannot be accepted. He

submitted that there is no evidence to substantiate the charge under Section 376 of the IPC. The investigation is completed and the charge-sheet is filed. Learned APP opposed the application for bail. It is submitted that the statement of the victim was recorded under Section 164 of the Cr.P.C. wherein she has attributed the role to the applicant having sexually assaulted her. It is further submitted that the statement of the complainant, the other children and the neighbours supports the prosecution case and shows the involvement of the applicant in the said crime. Learned APP further submitted that the medical evidence supports the prosecution case as it is clearly stated that the victim had given history that the accused was having sexually exploiting her since one year when the mother was not at home and the last physical relation is in August 2014. The medical certificate also mentions that hymen is not intact and there is no fresh tear and injury. It is therefore submitted that the statement of the victim and the history given to the doctor is corroborated by the medical evidence.

4 I have perused the charge-sheet. There is substance in the submissions advanced by the learned APP. The evidence on record shows that the applicant is *prima facie* involved in the said

crime. The statement of the victim is recorded under Section 164 of Cr.P.C. The victim is a step daughter of the applicant. The statement of the other children also supports the prosecution case. In the aforesaid circumstances, no case for bail is made out.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1613 of 2015 is rejected.

(PRAKASH D. NAIK, J.)