

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1832 OF 2016

Mohd. Kasim Riyasat Ali Shaikh

.... Applicant/Accused

Versus

State of Maharashtra
through Shivaji Nagar Police Station,
Mumbai.

.... Respondent

Ms. Afshan G. for Applicant/Accused.

Mr. Arfan Sait, APP for Respondent/State.

Mr. R.K.Jadhav, PSI, Shivaji Nagar Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 20TH JANUARY, 2017.

P.C.

. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 25th January, 2016 in Crime No. 42 of 2016 registered at Shivaji Nagar Police Station. Investigation is completed and charge sheet is filed against the applicant for the offence punishable under Sections 376, 354 of Indian Penal Code and Section 4, 6, 8 of the Prevention of Children from Sexual Offences Act, 2012.

2. It is the case of the prosecution that on 25th January, 2016 Abdul Samad Mustakim Khan lodged a report, alleging therein

that on 20th January, 2016, he had taken his daughter to a doctor, as she was suffering from high fever. Upon examination of his daughter, the doctor had opined that it would be necessary to take the girl into confidence and enquire with her, as she suspected that the girl had been exposed to some physical abuse. On 22nd January, 2016, the first informant had enquired with his daughter. Thereafter the mother had also enquired with the daughter. The child was hardly four years old at that time, and was crying as she had burning sensation on her vaginal part. The child was then taken to Dr. Nilima Thakur, who informed the mother of the victim that she has been exposed to sexual abuse. After making further enquiry, the victim had informed, that the present applicant had taken the victim to his house for playing and he had sexually abused her. When she returned, she was having high fever. The applicant happens to be living in close proximity of the house of the victim.

3. Perused the papers of investigation. The story narrated was that the victim had been sexually abused. The report further indicates that in all probabilities the accused had used his finger to sexually abuse the victim.

4. The applicant was arrested and charge sheet has been filed. The learned counsel for the applicant has vehemently submitted that there are several discrepancies in the course of investigation, which go to the root of the matter. According to the learned counsel the name of the applicant has not been correctly

mentioned by the victim. It is further submitted that there is a delay in lodging FIR. According to the learned counsel, the incident is of 20th January, 2016 and the FIR is filed on 25th January, 2016. It is also submitted that the clothes of the victim were seized and there were no blood stains on the same. The learned counsel for the applicant submits that applicant is in custody since one year, thus, he deserves to be enlarged on bail.

5. The learned APP submits that the delay can be explained. Since on 20th January, 2016 the victim girl had returned home with high fever, she could not tell her parents the trauma which she had undergone and she had high fever. She was taken to the doctor, who suspected that she has been exposed to sexual abuse. Thereafter on 22nd January, 2016, the victim was taken to Noor Hospital. The said doctor had also expressed the doubt that the victim has been sexually abused. On 24th January, 2016 the victim had started crying, as she could not bear the pain and at that time upon enquiry and only after taking her into confidence, she had disclosed the act committed by the present applicant. Hence, the delay in lodging FIR would not be fatal to the prosecution. The statement of the victim was recorded on 25th January, 2016 and she has disclosed that the applicant used to put her in fear and has sexually abused her. She had also disclosed the pain which she was suffering.

6. Taking into consideration the statement of the victim, the medical report and the fact that the child of four years' girl was

exposed to sexual abuse by a pervert. Applicant, in these circumstances, does not deserve to be enlarged on bail. The application being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)