

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

**CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.2109 OF 2017**

Satish Keshav Parmar                      ...      **Applicant**

V/s.

The State of Maharashtra                      ...      **Respondent**

.....

Ms.Tripti Shetty I/b. Jivan S. Hiwrale, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

Mr.Shankar Bhimrao Rathod, PSI, Sir J.J.Marg Police Station, Mumbai is present in person.

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**CORAM    :   A.M.BADAR J.**

**DATED    :   21<sup>th</sup> NOVEMBER 2017.**

**P.C. :**

1                      The applicant/accused No.2 in Crime No.I-158 of 2016 registered with Sir J.J.Marg Police Station, Mumbai for offences punishable under Sections 376 (2)(i)(g) of the Indian Penal Code as well as under Sections 4,8,10 and 12 of the Protection of Children from Sexual Offences Act, 2012(hereinafter referred to as 'POCSO Act' for the sake of brevity), by this application, is seeking his release on bail during pendency of the trial.

2                      The learned Advocate appearing for the applicant/accused submitted that co-accused named Ajaykumar

Chaupal is directed to be released on bail by the Special Judge under POCSO Act vide Order dated 13<sup>th</sup> October 2017. The learned Advocate further argued that case of the present applicant is at par with co-accused Ajaykumar Chaupal and, therefore, the applicant is entitled for the same treatment. She further argued that report is lodged by Smt.Vikiben Waghela on 09/07/2016 in respect of rape on her niece resulted in pregnancy. The FIR does not implicate the present applicant in the crime in question. The first statement of the victim is not culpable to the present applicant. The result of the DNA test does not show that the present applicant is biological father of the child born to the prosecutrix.

3           The learned Additional Public Prosecutor opposed the application by contending that statements of relatives of the applicant shows that in the month of July 2016, First Informant Vikiben Waghela had been to them with a request that the prosecutrix became pregnant due to acts of the present applicant and, therefore, she should be married to the present applicant. Thus, according to the learned Additional Public Prosecutor, the applicant had committed penetrative sexual intercourse with the minor female victim.

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

5           The First Informant, who is maternal aunt of the female victim child on 09/07/2016 reported the police that she got the minor female child medically examined from the Doctor at the Central Diagnostic Clinic. As she came to know that the minor female child is pregnant, she made inquiry from the minor female child and then she is informed by the minor female child that accused No.1 Azam Anis Khan had committed rape resulting in pregnancy of the minor female child. That is how initially, the FIR is lodged only against accused No.1 Azam Anis Khan. During investigation, statement of the minor female child came to be recorded on 11/07/2016. In that statement, the victim narrated to the Investigator that accused No.1 Azam used to take her to the terrace of the building and used to commit penetrative sexual intercourse with her. The minor female victim of the crime in question is stated to be of 16 years of age. After about six months and precisely on 22/01/2017, the investigator had chosen to record her supplementary statement. In that statement, she stated to the Investigator that the present applicant is her brother-in-law, having married with her elder sister Pushpa. This supplementary statement further shows that Pushpa and present applicant were residing separately due to their differences. The victim female child further stated that in September 2015, the present applicant took her in a room adjacent to public lavatory and committed rape on her. Thereafter, on 28/01/2017, the minor female child in her

further supplementary statement reported that accused No.3 Ajaykumar Chaupal had committed rape on her. That is how, during the course of investigation, the present applicant and Ajaykumar Chaupal are arraigned as accused.

6           Name of the present applicant is figuring after about six months of filing of the FIR. The report of the DNA test itself shows that the DNA of the child is not matching with the DNA of the present applicant. Co-accused Ajaykumar Chaupal having similar accusations is already released by the learned Special Judge under POCSO Act. In this view of the matter, the present applicant, who is having a case similar to the co-accused Ajaykumar Chaupal, deserves the same treatment.

- (i) The application is allowed.
- (ii) The applicant/accused in Crime No.I-158 of 2016 registered with Sir J.J.Marg Police Station, Mumbai for offences punishable under Sections 376 (2)(i)(g) of the Indian Penal Code as well as under Sections 4,8,10 and 12 of the Protection of Children from Sexual Offences Act, 2012 be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant shall not tamper with the prosecution evidence.

(iv)The applicant/accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to the Police Officer.

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