

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

BAIL APPLICATION NO.2366 OF 2016

Zakir Sharif Shaikh

.... Applicant

versus

State of Maharashtra

... Respondent

Mr.Santosh S. Musale, Advocate i/b. Dayanand Chandrakant Awari, Advocate for the Applicant.

Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 25th JANUARY, 2017.

P.C. :

1. This application is moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under section 354, 509 of the Indian Penal Code and sections 3, 4, 7, 8, 12 of POCSO, 2012 in C.R.No.549/16 of Yerwada Police Station.

2. The complainant is the mother of the victim girl. The victim girl is 8 years old. Alongwith her there are other friends of her age. On 17/07/2016 at around 07.30 p.m. victim girl alongwith her cousin sister and one other friend case running in

the house. They were looking scared and therefore when complainant enquired about it, the girl and niece and the friend told that when they were all playing in the next lane, at that time, one uncle blinked eye, made gestures and he lifted victim and thereafter he touched her private part and also he asked a kiss from the cousin and therefore three of them ran away and came home. The complainant, mother of the victim, thereafter immediately went alongwith her daughter to the spot, where the offence was committed and she found applicant/accused present there. The complainant knew the applicant/accused by name and therefore she came back. She and her sister-in-law did not disclose this incident in the beginning. However, on the next day the complainant disclosed the incident of sexual assault on her daughter to her husband and therefore two days after the incident, i.e. on 19/07/2016, she approached police and gave information, pursuant to which offence was registered at C.R.No.549/16 with Yerwada Police Station, Pune. The applicant/accused was arrested on the same day i.e. 19/07/2016 and he is in prison since then.

3. The learned counsel for the applicant/accused has submitted that in the statement recorded by the learned Magistrate under section 164 of Cr.P.C., the victim girl and her cousin and friend did not tell about the touching the private parts, but they have only mentioned about the gestures. He submitted that there is discrepancy in the complaint and the statement recorded under section 164 of Cr.P.C. He further submitted that there is delay in recording of the F.I.R.
4. The learned prosecutor opposed the application as the offence is of serious nature.
5. Perused the statements of other witnesses and also statement under section 164 of Cr.P.C. The offence is of sexual assault. The victim, her cousin and friend were of age group of 8-9 years old. The incident took place on 17/07/216 and two days thereafter the complaint was registered. This delay is explained by the complainant that she initially hesitated to lodge

the complaint as her daughter was minor. The applicant/accused is the resident of same locality.

6. In view of this, I am not inclined to grant bail. The application for bail is rejected. However, the learned Sessions Court to endeavor to expedite the trial.

(MRIDULA BHATKAR, J.)