

Anand

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

BAIL APPLICATION No.2554 OF 2016

Amol Ashok Pawar

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr.Satish Borulkar i/b. Mr.S.V.Chaugule, Advocate, for the
Applicant

Mr.Rajan Salvi, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.04.2017

P.C.

. At the outset, learned counsel for the Applicant seeks leave to amend to delete the name of the prosecutrix. Leave granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the parties.

3. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.39 of 2015 registered with the Talbid Police Station, Taluka – Karad, District - Satara, for the alleged offences punishable under Sections 376D, 323, 506 of the Indian Penal Code and under Sections 5(g),(j)(ii),(l) & 6 of the Protection of Children from Sexual

Offences Act, 2012 (For short "POCSO").

4. Learned counsel for the Applicant submitted that it is doubtful that the prosecution case itself is doubtful. He submitted that it is evident from the prosecutrix's statement, that the complaint/FIR, was lodged by her after consulting her brother, after he came down from Mumbai. He submitted that there is nothing to show that the prosecutrix is the person whose Birth Certificate has been produced on record. Mr. Borulkar submitted that considering the discrepancy in the name, mentioned in the Birth Certificate and the prosecutrix's statement, it is doubtful if it is the Birth Certificate of the prosecutrix.

5. Learned APP opposes the Application.

6. Perused the papers.

7. According to the prosecutrix/complainant, she was 14 years and 11 months at the time of the incident. She has stated that on 10.05.2015, co-accused Bhushan Pawar and the Applicant requested her to find their lost Axe in the farm shed which was located near by. She has stated that she tried to

locate the Axe and when she could not locate the same, she started going out of the shed, when co-accused Bhushan Pawar held her hand, pushed her on the floor and the present Applicant locked the door from outside. She has alleged that co-accused Bhushan Pawar first sexually assaulted her and thereafter, the present Applicant. According to the prosecutrix, she informed her parents about the said incident, however, her parents did not take any action out of fear and considering the fact the Applicant and the co-accused belonged to a higher class and as they were working as labourers in the accused field. She has stated that both the accused (including the Applicant) again after a span of 15 days sexually assaulted her. The prosecutrix was threatened with dire consequences, if she disclosed the incident to anyone. However, she did not inform her parents about the same. Thereafter, in November, the family members of the prosecutrix took her to a nearby hospital, as they thought that she was pregnant. The Doctors confirmed that the prosecutrix was pregnant. On 18.11.2015, she was taken to the Sonography Centre, at Malkapur, Karad, where it was confirmed that the prosecutrix was six months pregnant. Accordingly, on 20.11.2015, the prosecutrix lodged the aforesaid complaint as against the Applicant and co-accused Bhushan Pawar.

8. It appears that the prosecutrix's parents were working in the field of the accused as labourers and hence no complaint was lodged as against the Applicant and the co-accused-Bhushan. In the Medical report dated 21.11.2015, the prosecutrix has given history of sexual assault by two persons on 10.05.2015 and thereafter, after 15 days again by two persons. The DNA report shows that co-accused Bhushan Pawar is the biological father of the child. Merely because the DNA report shows that co-accused-Bhushan is the father of the child does not mean that there is no material against the Applicant. The prosecutrix has set out in detail the sexual assault on her by the Applicant and co-accused-Bhushan. The prosecutrix was a young school going girl, aged 14 years 11 months at the time of the incident. The Applicant belongs to a higher class whereas the prosecutrix and her parents come from a poor strata. The prosecutrix's parents were working as labourers in the field of co-accused-Bhushan, and as such the possibility of the influencing the witnesses cannot be ruled out.

9. Considering the aforesaid, the Application stands rejected.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)