

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

BAIL APPLICATION NO.2566 OF 2016

Navin Kumar Chhotelal Tiwari Applicant

versus

State of Maharashtra ... Respondent

Mr.Rajendra Sorankar, Advocate for the Applicant.

Mr.Purnima H. Kantharia, Advocate for Respondent No.1.

Mr.S.H. Yadav, APP for the State/Respondent No.2.

Ms. Kritika Mishra, Advocate for the Complainant.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 20th FEBRUARY, 2017.**

P.C. :

1. This is an application under section 439 of Cr.P.C. moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under sections 3, 5, 6, 7 and 8 of Immoral Trafficking (Prevention) Act, (PITA) and 3 and 4 of POCSO Act, 2012 in C.R.No.58/16 of Nani Daman Police Station.

2. It is the case of prosecution that the prosecutrix is a 15 years old girl, resident of Bangla Desh. She was found at hotel Ratnakar at Daman where the applicant/accused was working as a Manager. It is her case that she left her house and she met one person by name Raju who brought her to Ahmedabad and he kept her there for 8 days. Thereafter, she was handed over to one person and that person brought her to hotel New Ratnakar at Nani Daman, wherein the applicant/accused was working as a Manager. It is the case of prosecution that the applicant/accused and other hotel staff had forcible sexual intercourse with her and then on 18/04/2016 at 01.30 hours by opening the flap of the window she called for help and then the cops patrolling there, on her shouting, came to the hotel and found this girl. So they registered the offence on the same day. The applicant/accused was arrested on the same day. Hence this bail application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent. There is

variance in the complaint given by the victim on 18/04/2016 and in her statement dated 19/04/2016 recorded under section 164 of Cr.P.C. the applicant/accused nowhere comes in the picture. She has referred three persons with him. She came in contact with one Raju, the other as fat person and the third is unknown person. The description given in the complaint about these persons, is not applicable to the present applicant/accused.

4. He further submitted that in the test identification parade, which was conducted on 07/06/2016, was not as per the requirements of the rules and is vitiated. He further submitted that the reason for identifying the present applicant/accused is not mentioned in the memorandum of test identification parade. The learned counsel further submitted that the medical certificate discloses that her internal examination was conducted. He submitted that the applicant/accused was arrested prior to recording of her statement under section 164 of Cr.P.C. and at the time of his

arrest, his clothes were seized. However, nothing incriminating was found on his person or on his clothes. He submitted that no allegations were made against the applicant/accused in the complaint.

5. He further submitted that when she was found by the police, she was taken in custody and handed over to Child Welfare Committee. Thereafter her statement i.e. the complaint was recorded by police. That is her natural version, where she did not give a specific role to the applicant/accused. Her statement under section 164 of Cr.P.C. appears to be tutored and she has added allegations against the applicant/accused, which is not to be considered at this stage.

6. The learned prosecutor opposed the application. She submitted that the prosecutrix is minor. She was 15 years old at the time of incident. The learned prosecutor relied on her medical certificate and test identification parade memorandum. The learned prosecutor further submitted that the police and

Magistrate took necessary precautions and followed most of the rules while conducting test identification parade and during the parade the complainant has identified the applicant/accused. The learned prosecutor further submitted that her statement under section 164 of Cr.P.C. is to be relied, wherein she has specifically mentioned that the applicant/accused and other two persons from the hotel had forcible sexual intercourse with her on the same day.

7. Perused the FIR. Perused the statement of the prosecutrix recorded under section 164 of Cr.P.C. She has stated specifically about the act committed by the applicant/accused in her statement under section 164 of Cr.P.C. she has addressed the applicant/accused as the owner and she has also made specific allegations against the owner of the hotel and other three persons who had sexual intercourse with her.

8. Medical certificate is perused. In the medical certificate the Medical Superintendent of Government Hospital Daman has opined that;

*“Hymen open with annular opening has O-dematur
irregular edges with fresh bleeding suggestive of forceful
vaginal penetration of recent origin @ 24 to 48 hrs.”*

9. The manner in which the complainant was found, at this stage, I am not inclined to grant bail. Hence application stands rejected with the directions to the learned Sessions Judge to proceed with the trial and complete it till 31/10/2017.

(MRIDULA BHATKAR, J.)