

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2567 OF 2016

Mohammed Abdul Hussain Shaikh @
Mohammed Abdul Hussain Razzak Shaikh ... Applicant
Vs.
The State of Maharashtra ... Respondent

Ms. Tahera Abdul Rashid Qureshi, Advocate for the applicant.
Mr. Deepak Thakery, APP for the State.
Mr. V.L. Kadam, A.P.I., Kalwa Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **14th February, 2017.**

P.C.:

This Application is moved by the applicant/accused for bail, as he is facing prosecution for the offences punishable under sections 376(2)(f)(i)(j) (k) and 377 of the Indian Penal Code and under section 4 and 8 of Prevention of Children from Sexual offences Act, 2012 in C.R. No. 132 of 2015 registered with Kalwa Police Station, Thane.

2. It is the case where a girl child of 3½ years was sexually abused on 24th March, 2015 by a neighbour who was approximately 65 years at the time of incident. The applicant/accused was arrested on the same day, i.e., 24th March, 2015 and he is in prison since then. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that she does not want to argue on merits of the case but the only ground for

bail which she contends is that the trial is not yet started though the charge was framed in January, 2016. The learned counsel submitted that the prosecutrix, her parents and eye witness Mira Ansari are Bangladeshi and they are deported to Bangladesh by the Government of India. She has relied on the complaint of one Santosh Manohar Dhadve, P.I. against Bangladeshi refugees, who are residing illegally and have violated the relevant provisions of Foreign National Act. She relied on the order dated 8th October, 2015 passed by the 9th J.M.F.C. Thane, by which the parents of the prosecutrix were punished and were deported to Bangladesh. The learned counsel further submitted that in view of this order, as the prosecutrix, her parents and eye witness Mira Ansari are not available though the witness summons were issued, the trial is not proceeding. She submitted that the applicant/accused is ready to face the trial otherwise he is to be granted bail.

4. Learned APP opposed the Application. He submitted that a girl of 3½ was sexually assaulted by the applicant/accused, who is 65 years old. Learned APP pointed out that other than Mira Ansari, there are other two eye witnesses who have seen the actual act of sexual abuse to the prosecutrix at the hands of applicant/accused. He further relied on the medical certificate.

5. Considered the submissions of both the counsel. It appears from

the submissions of learned APP that the material witnesses, i.e., other two eye witnesses and medical record of the prosecutrix is available. She was a girl of 3 ½ years old. I have considered the papers of deportation which are filed before this Court. In view of this, the learned Sessions Judge, Thane is hereby directed to take all necessary steps and proceed with the trial and endeavour to complete the trial till December, 2017.

6. Application for bail is disposed of.

(MRIDULA BHATKAR, J.)