

Anand

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

BAIL APPLICATION NO. 26 OF 2018

Sanehi Shreekisan Gaud .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Manish Jain i/b. S. M. Jain & Associates, Advocate, for the
Applicant

Mrs. A. A. Takalkar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 21.03.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 38 of 2017 registered with the Tulinj Police Station, District – Palghar, for the alleged offence punishable under Section 376 of the Indian Penal Code and under Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act (for short 'POCSO').

3. Perused the charge-sheet in particular, the statement of the

survivor aged 15 years (mentally challenged girl) as well as the Medical Report. According to the Complainant, mother of the survivor, the incident took place on 15.01.2017 in the afternoon. She has alleged that the survivor had gone to the Applicant's house, as he had called her and thereafter, the Applicant sexually assaulted her daughter. A perusal of the statement of the prosecutrix is consistent with the complaint. She has stated that the Applicant had called her to his house and thereafter, the Applicant had sexually assaulted her. It appears that thereafter, the complaint was lodged on 18.01.2017 and the survivor was sent for medical examination on 18.01.2017. Column 1 of the Medical Report reads thus :-

“ 1) Evidence of injuries to the genitals /
anus :
Hymen tear 6 0' clock position
fresh tear
perinatal tear – 6 0' clock position
minimal tear
edge were indurated & s edema
present.”

It also appears from the statements of witnesses that the girl had speaking problems and therefore, was also referred to a Psychiatrist to find out her mental IQ. The Applicant's daughter and the survivor were friends. The Applicant, aged 41 years has abused the trust reposed in him by the survivor, who was only 15 years. Although, it is contended

that there is a delay in lodging the FIR, in such cases, the delay cannot be said to be fatal, inasmuch as, the same has been explained by the Complainant in the FIR.

4. Considering the material on record, this is not a fit case to enlarge the Applicant on bail. The possibility of the Applicant threatening or intimidating the witnesses cannot be ruled out. Accordingly, the Application stands rejected.

5. 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.)