

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

BAIL APPLICATION NO.85 OF 2018

Shubham Bapu Shinde		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Ms. Anjali Patil for the Applicant.
Ms. P.P. Shinde, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 5th February, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 27th June 2017 in Crime No.27 of 2017, registered at Vishrantwadi Police Station for the offences punishable under Sections 376(2), 323, 504, 506 Indian Penal Code and Sections 3,4, 5(L), 6,7 and 8 of Protection of Child from Sexual Offences Act. The investigation is completed and the charge-sheet is filed against the present applicant in August, 2017.

3 It is the case of the prosecution that Ms. "X" did not have menstruation for two months. Her mother had initially taken her to Dr. Ranade's hospital at Laxminagar, Yerwada. He had recommended that the girl should undergo sonography test. Accordingly, she had got herself examined. The sonography report showed that the girl had conceived pregnancy of about 2½ months. Thereafter the minor's mother had taken her to Sasoon Hospital for undergoing medical termination of pregnancy. She had submitted the sonography test report to the Doctor. Doctor had confirmed that the age of the patient was hardly 17 years old. He had informed her mother, Mrs. Kanchan Sanjay Gangawane that it is a police case and thereafter they were referred to the police, who were posted at Sasoon Hospital.

4 The statement of the minor was recorded by the police. She had disclosed that she was acquainted with the applicant for quite sometime. In March, 2017, the applicant had invited her to his house at Vishrantwadi. She had visited his house. There was nobody else in the house on that day and that the applicant had ravished against her wish and had threatened her of dire consequences and therefore she had maintained silence. The minor was sent for clinical examination. Hence, the offence was registered under Section 376 Indian Penal Code. Ms. "X" had disclosed to the Doctor that she was acquainted with the applicant for more than 1½ years. They were

studying in the same school campus. They were having affair and also they had established physical relationship at the room of accused. Last act of intercourse was in March, 2017. Thereafter the accused had started ignoring her. On 30th May, 2017, she had subjected herself to U.P.T. test and it was revealed that she is carrying pregnancy.

5 Learned counsel for the applicant submits that it was a love affair between the minor girl and the applicant. That the minor had not disclosed to the Doctor that the act was committed against her wish. They were having love affairs for more than 1½ years. Learned counsel submits that although Ms. "X" was less than 18 years old, she had attained the age of discretion and she was aware of the consequences of the act. It is, in these circumstances the learned counsel for the applicant prays that the applicant be enlarged on bail.

6 Upon perusal of the statement of the mother of the minor, it is clear that in fact Ms."X" had disclosed to her mother that they had physical relationship. They had not chosen to file first information report against the applicant but instead had been to Sasoon Hospital for undergoing medical termination of pregnancy. Only because Doctor referred the case to the police, the criminal prosecution is initiated against the present applicant. It is submitted

that the allegation that there was forcible intercourse is an after thought.

7 Learned counsel for the applicant also placed on record a love letter exchanged between the applicant and Ms. "X". There are also notings in her personal diary, which shows that she had referred to the applicant as a love partner and after the family members had learnt about their affairs, she was also assaulted and troubled by her family members. The noting shows that she was desperately in love with the present applicant. Taking into consideration the notings in the personal diary of Ms. "X" and her love letters to the applicant, this Court is of the opinion that the applicant deserves to be enlarged on bail.

8 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

1 The application is allowed.

2 The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one or more solvent sureties in the like amount.

3 The applicant be enlarged on provisional cash bail of Rs.15,000/- for a period of four weeks, during which he shall furnish sureties to the satisfaction of the trial Court.

(*Smt. Sadhana S. Jadhav, J*)