

Anand

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

BAIL APPLICATION NO. 101 OF 2018

Ashok Shivaji Gaikwad .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. R. Arote, Advocate, for the Applicant
Mr. A. A. Palkar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 27.03.2018

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. 220 of 2017 registered with the Wadala T. T. Police Station, Mumbai, for the alleged offences punishable under Sections 354, 354A, 506 of the Indian Penal Code and under Sections 8 & 12 of the Protection of Children from Sexual Offences Act (for short 'POCSO').

3. Perused the charge-sheet. The survivor is the niece of the Complainant. According to the Complainant, the incident took place on

10.06.2017 when the survivor's mother had gone out for work. She has alleged that at about 1.30 p. m. the Applicant i. e. the Complainant's brother-in-law and maternal uncle of the survivor came to the house, after consuming alcohol. She has alleged that the Applicant took the survivor to the house in the same building. She has stated that as she and her husband suspected something, they peeped through the window and saw that the Applicant was outraging the survivor's modesty. She has alleged that the survivor informed her that the Applicant reprimanded her and had forcibly removed her clothes and was touching her inappropriately. The 161 statement recorded of the survivor also reflects the same. However, in the 164 statement, the survivor has clearly stated that she had made false allegations as against her uncle at the behest of her aunt and that her aunt wanted to falsely implicate the Applicant (uncle). She has further stated that her aunt (Complainant) wanted to throw the Applicant out of the house. Although, the learned APP submitted that the said statement i. e. 164 statement must have been recorded under pressure, the fact remains that the said statement is clearly contrary to the 161 statement. The Applicant is in custody since June, 2017 and investigation is complete and charge-sheet is filed.

4. Considering the aforesaid, the Application is allowed and

the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

- (i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs. 25,000/-** with one or two local sureties in the like amount;
- (ii) The Applicant shall report to the investigating officer of the concerned police station on the **first & third Sunday of every month** between **10:00 a. m. and 11:00 a. m.** till the conclusion of the trial;
- (iii) The Applicant shall not enter the jurisdiction of the Wadala T. T. Police Station (where the survivor resides) except for the purpose of complying with clause (ii) of the order;
- (iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The Applicant to cooperate with the conduct of the trial;
- (vi) The Applicant shall file an undertaking with regard to clauses (ii) to (v), in the trial Court, within two weeks of his release;
- (vii) If there are two consecutive defaults in appearing before the trial Court or reporting to the police station, the prosecution will be at liberty to apply for cancellation of the Applicant's bail.

5. The Application is allowed in the aforesaid terms and is accordingly disposed of.

6. 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.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)