

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 325 OF 2018

Shubham @ Trivendrakumar Lalbihari PathakApplicant.

Vs.

The State of MaharashtraRespondent.

Mr. V.A. Bhanushali for the Applicant.

Mr. M.G. Patil APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 5th JULY, 2018.

P.C.:-

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. I-193 of 2017 dated 13th June, 2017 registered with Mira Road Police Station, District Thane under Sections 376(d), 328, 354, 506 of the Indian Penal Code and Sections 4, 6 of the Protection of Children from Sexual Offences Act, now culminated into Special Case No. 196 of 2017.

2 Heard the learned counsel appearing for the Applicant and the learned APP. Perused the charge sheet.

3 The prosecutrix, in the present case, was aged 16 years and 6 months on the date of lodgment of the crime and therefore,

with a view to protect her identity and in consonance with the provisions of Section 228(A) of the Indian Penal Code and Section 33(7) of the POCSO Act, the detailed narration of facts mentioned in the first information report and in the statement of the victim girl is hereby avoided.

4 It is the prosecution case that, the Applicant along with two other accused persons represented the prosecutrix that, they will take her for roaming in a car and took her at Gorai beach. They also forced her to consume beer and directed her to smoke cigarette.

After the prosecutrix got inebriated, they took her at an isolated place. It is alleged that, the boy friend of the prosecutrix Mr. Ameya and the Applicant thereafter committed rape on her. When the prosecutrix started screaming, the people from near vicinity came there. The people called police from Navghar Police Station and initially the prosecutrix, the Applicant and co-accused Ameya were taken to Navghar Police Station. The police from Navghar Police Station inquired with the prosecutrix, at that time, she did not disclose anything to them and therefore, the Applicant was allowed to leave police Station. The prosecutrix after a gap of about 4 days i.e. on 13th June, 2017, lodged the present crime.

5 The perusal of charge-sheet would indicate that, the prosecutrix at the first instance, did not disclose the fact of forcible sexual assault on her to the police at Navghar Police Station, Bhayandar, where she was taken along with the accused persons and in fact, told the police that Ameya is her boy friend and nothing untoward had happened to her. However, while lodging the present crime, the prosecutrix has stated that the Applicant and her boyfriend Ameya had committed forcible sexual assault on her on 9th June, 2017.

 The Forensic Medical Examination report of the victim is not corroborating the version of the prosecutrix and in fact, *prima facie* it appears that, it belies her statement of sexual assault.

6 The Applicant is arrested on 13th June 2017, and since then he is in jail. The police have already completed the investigation and have submitted charge-sheet.

 In view of above, I am inclined to release the Applicant on bail.

7 Hence, the following order.

- a) The Applicant be released on bail in CR No. I-193 of 2017 dated 13th June, 2017 registered with

Mira Road Police Station, District Thane, now culminated into Special Case No. 196 of 2017, on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

- b) After his release from Jail, the Applicant shall attend Mira Road Police Station, on every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- c) The Applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.
- d) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

8 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)