

Anand

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

**BAIL APPLICATION NO. 436 OF 2018**

Mohd. Yunus Mohd. Shabbir Sayyed .Applicant

Vs.

The State of Maharashtra .Respondent

Ms Munira Palanpurwala i/b. Ms Sartaj Shaikh, 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. 91 of 2017 registered with the Chembur Police Station, Mumbai, for the alleged offences punishable under Sections 363, 376(2)(i) of the Indian Penal Code and under Sections 4 & 8 of the Protection of Children from Sexual Offences Act ( for short 'POCSO').

3. Perused the papers. According to the prosecution, the

survivor left home for going for tuition class on 22.03.2017 at about 1.30 p. m.. As the survivor did not return home upto 4.00 p. m., the Complainant's husband enquired about her at the tuition class, to be informed that the survivor had not come for tuition class. Pursuant thereto, the Complainant and her husband made inquiries with the survivor's friends and relatives. When the Complainant and her husband checked the survivor's cupboard, they found that Rs. 6,000/-, one Gold ring, one dress and mobile were missing. As the Complainant apprehended that somebody had kidnapped her daughter, a complaint was lodged as against unknown person alleging an offence punishable under Section 363 of the IPC.. During investigation, it was revealed that the Applicant had taken the survivor and kept her at his sister's house and had physical relations with her. Pursuant thereto, Section 376 of the IPC and Sections 4 & 8 of the POCSO were added.

4. Learned APP has tendered the 164 statement of the survivor. A perusal of the said statement shows that the survivor had gone to Nagpur and stayed at the Applicant's sister's house, where they had physical relations. She has stated that as the Applicant had told her that they would get married, she agreed to the said physical relations. No doubt, since the survivor was a minor, consent was immaterial.

However, having regard to the peculiar facts & circumstances of the case and the fact that the Applicant is in custody since March, 2017 and that investigation is complete and charge-sheet is filed, 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. 20,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall report to the investigating officer of the concerned police station on the **first 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 tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The Applicant shall inform his latest place of residence and mobile contact number within two weeks of his release and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station as well as to the trial Court ;
- (v) The Applicant to cooperate with the conduct of the trial;
- (vi) The Applicant shall not leave Mumbai & Thane city

without prior permission of the trial Court.

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

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

**(REVATI MOHITE DERE, J.)**