

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

CRIMINAL BAIL APPLICATION NO.453 OF 2018

Mahesh Sharad Kalekar	... Applicant
V/s	
State of Maharashtra	... Respondent

Mr.Adwait Bhonde i/by Mr. Ameya Anil Dange for the Applicant.
Ms.Veera Shinde, APP for the State.
Ms.Varsha N. Shinde, API, Faraskhana Police Station, Pune present.

**CORAM : SMT.SADHANA S. JADHAV, J.
DATE : JUNE 05, 2018.**

P.C. :

1. Heard.
2. This is an application under Section 439 of Cr.P.C.. The applicant herein was arrested on 8th August 2017, in Crime No. 174 of 2017 registered at Faraskhana Police Station for the offence punishable under Section 376 of IPC and Section 3, 4, 5(j)(2) and 6 of the Protection of Children from Sexual Offences Act, 2012. Her statement was recorded in Sassoon Hospital.
3. It is the case of the prosecution that on 3rd August 2017, Miss X lodged the report at Faraskhana police station alleging therein that her father works as a watchman and she was

working as house-maid at Kumbhar Ves Chowk. According to her, in May 2017 at about 5.30 to 6.00 p.m. she had been to Khandoba temple. There was one boy there. They had not talked to each other, but she had seen him on the next date in the afternoon. Since the temple was crowded, they did not talk to each other and after aarti was over, he disclosed to her that he likes her. He asked her to accompany him on the scooter. She had obliged. They went to lodge. She does not recollect the name of the lodge. She had asked the name of the boy, but she has forgotten his name. He had promised to marry her and thereafter, had sex with her. They had dinner together in the room and thereafter, she had accompanied him on the scooter. She did not recollect the room number. She had not disclosed about the said incident to her parents. She only remembered that she was taken to the lodge at Chinchwad. On 1st August 2017, she realized that she did not have menses since two months and she has disclosed the same to her mother. She was taken to Deen Dayal Hospital. She was subjected to Sonographic test and thereafter, the doctor had asked them to go to Sassoon hospital. At Sassoon hospital it was revealed that she was carrying

pregnancy about 2 and ½ months i.e. more than 12 weeks. She has given the description of the person. On the basis of the said report Crime No.174 of 2017 was registered at Faraskhana police station. On 8th August 2017, the supplementary statement of Miss X was recorded and she had disclosed that on 3rd August 2017, she was in a perplexed state of mind and therefore, could not disclose the fact correctly. In the said statement she has disclosed that her real name is Miss X Kalaskar. However, her mother has withdrawn herself from the society of her father and staying with Ganesh Shahane and therefore, she has disclosed her name as Miss X Shahahe. She has disclosed that her father is an insane person. She had then disclosed that she was working as a house-maid. The present applicant was residing in the same vicinity. She had been to grocery shop to buy some articles for the employer and at that time the present applicant had approached her and one day when she was drying the clothes the kids the applicant had dragged her in the nearby lane and ravished her. He had started visiting her house. She had not disclosed the name of the applicant to any one as she was threatened by the applicant. According to her, she was ravished

on more than two occasions.

4. The statement of the victim is recorded under Section 164(5) on 22nd September 2017 and she has given the said statement in consonance with her supplementary statement.

5. The learned counsel for the applicant submits that it is pertinent to note that the first report i.e. the first information report was recorded in the presence of her mother and therefore, there was no reason for her to be scared. She had undergone medical termination of pregnancy at Sassoon Hospital, Pune on 3rd August 2017. There was no report of the Deen Dayal hospital. It is pertinent to note that the statement of all witnesses is recorded only after 8th August 2017, and therefore, there is corroboration to the supplementary statement. Learned counsel for the applicant submits that the prosecutrix was 17 years old and had attained an age of understanding. The incident had come to light only because she had shown signs of pregnancy. There was no complaint. Moreover, applicant used to visit the house of her grand-mother also. The first information report which is lodged appears to be concocted for the reasons best known to the victim. The learned counsel for the applicant

vehemently submits that possibility of there being consensual sex can not be ruled out and that could be precisely the reason that the complainant did not wish to name the applicant.

6. Upon considering the facts of the case, this court is of the view that the applicant is entitled for grant of bail. However, the observations are restricted to application under section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR or discharge application or at the time of trial.

ORDER

- i) The Application is allowed.
- ii) The applicant be enlarged on bail on furnishing PR bond in a sum of Rs.30,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall not enter into the jurisdiction of Kasba Peth till the conclusion of trial.
- iv) At the request of learned counsel for the applicant, the applicant be enlarged on provisional cash bail for a period of four weeks.
- v) The applicant shall furnish sureties within four weeks to the

satisfaction of the Trial court.

vi) The application is disposed of accordingly.

(SMT.SADHANA S.JADHAV, J.)