

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 466 OF 2018**

Faeem Salim Khan

....Applicant.

Vs.

The State of Maharashtra & Anr.

....Respondents.

Mr. Sachin Pandey for the Applicant.

Ms. Rutuja Ambekar APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 25th JULY, 2018.****P.C.:-**

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. 14 of 2016 dated 13th January 2016 registered with MHB Colony Police Station under Sections 376 of the Indian Penal Code read with Sections 4, 6, 8, 10, 12 of the Protection of Children from Sexual Offences Act, 2012, now culminated into Special Case No. 115 of 2016.

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

3 The victim girl was aged about 2 years at the time of lodgment of the crime and therefore, with a view to protect her

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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 the facts mentioned in the first information report and in the statement of the victim girl is hereby avoided.

4 The first information report is lodged by the mother of the victim girl.

It is the prosecution case in brief that, the Applicant was neighbor of the informant. On the date and time of commission of offence, it is alleged that the Applicant attempted to commit penetrative vaginal sexual intercourse with the victim girl. Due to the cries of the victim girl, the first informant and the neighbours rushed to the spot and saw the alleged attempt and when tried to apprehend the Applicant, he run away from the scene of the offence.

During the course of investigation the Applicant came to be arrested on 15th January 2016 and after completion of investigation, the police have submitted charge sheet.

5 The record indicates that, the statement of first informant i.e. the mother of the victim girl is also recorded under Section 164 of the Code of Criminal Procedure by the learned Metropolitan

Magistrate, Railway Court, Andheri, Mumbai wherein, the informant has given a different version than what has been stated in her statement under Section 161 of the Code of Criminal Procedure. In her 161 statement, the informant has categorically stated that she saw the Applicant attempted to commit rape on her minor daughter from the gap of the window and in her 164 statement, she has stated that the other two ladies (neighbours) had seen the said act of the Applicant. Prima facie, it appears that, there is variance in the said two statements of the first informant. The opinion given by the Medical Officer mentions that there was no evidence of recent or old penetrative vaginal sexual intercourse and any evidence of injuries over the body of the victim girl. Thus, it is clear that the allegation against the Applicant was an attempt to commit the said offence.

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

6 Hence, the following order.

- a) The Applicant be released on bail in CR No. 14 of 2016, registered with MHB Colony Police Station, now culminated into Special Case No. 115 of 2016, on his furnishing PR bond of Rs.25,000/-

with one or two solvent local sureties in the like amount.

- b) Before his release from jail, the Applicant shall produce the documents pertaining to his prospective residence, before the MHB Colony Police Station.
- c) After his release from jail, the Applicant shall not enter the jurisdiction of MHB Colony police station, except marking his presentee, as directed here-in-below.
- d) After his release from jail, the Applicant shall attend the MHB Colony police station every alternate Monday initially for the period of six months and thereafter, every first Monday of the month between 11.00 a.m. to 1.00 p.m. till conclusion of trial.
- e) The Applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.
- f) Any two consecutive defaults in complying with

the afore-stated conditions will attract the provisions of cancellation of bail.

- g) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

7 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)