

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1145 OF 2018

Wasim Amir Shaikh

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Ms. Mallika A. Ingale a/w Rushit P. Thakkar for the Applicant.

Ms. J.S. Lohokare APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 19th JULY, 2018.

P.C.:-

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. I-146 of 2017 dated 17th August, 2017 registered with Palghar Police Station under Sections 363, 376(j) (k)(n), 366, 366(a), 212 read with Section 34 of the Indian Penal Code and Sections 4, 8 and 12 of POCSO Act, now culminated into Special Case No. 8 of 2018.

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

3 The prosecutrix in the present crime was aged about 17 years 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 the facts mentioned in the first information report and in the statements of the prosecutrix and her close relatives is hereby avoided.

4 The first information report was lodged by the father of the prosecutrix on 17th August, 2017, initially under Section 363 of the Indian Penal Code. During the course of investigation, the Applicant came to be arrested on 25th December, 2017 and after completion of the investigation, the police have submitted charge sheet for the offences punishable under various sections as mentioned above in paragraph No.1.

5 The statements of prosecutrix recorded under Section 161 so also Section 164 of the Code of Criminal Procedure would indicate that, there was a love affair between the Applicant and the prosecutrix, which blossomed into their physical relationship. That, on 16th August, 2017, the prosecutrix left her parents house and accompanied the Applicant to go to Mirzapur, State of Uttar Pradesh and stayed there for about a month. The prosecutrix subsequently became pregnant and the record of investigation indicates that the

foetus was stillborn. The DNA report of the said foetus is still awaited.

6 After perusing the statement of the victim girl, *prima facie* it appears that, on the date of her elopement with the Applicant i.e. on 16th August, 2017, she had attained the age of understanding and discrimination and at her own sweet will, she left her parents house and went with the Applicant to the Mirzapur, State of Uttar Pradesh. The Mental Health Expert in his report dated 13th January, 2018 while analyzing the mental health of the prosecutrix has observed that, the prosecutrix was having insight present and judgment intact. Thus, it is *prima facie* clear that, the Applicant had attained the age of understanding and discrimination on the date of her elopement i.e. on 16th August, 2017.

7 The learned counsel appearing for the Applicant on instructions submitted that, the Applicant does not dispute the paternity of the said foetus and in fact, has admitted his love affair with the prosecutrix. The Applicant is arrested on 25th December 2017 and since then, he is in jail. The investigation of the present crime is completed and no fruitful purpose will be served by further keeping the Applicant in incarceration.

In view of the above, the Applicant can be released on bail.

8 Hence the following order:-

- a) The Applicant be released on bail in CR No. I-146 of 2017, registered with Palghar Police Station now culminated into Special Case No. 8 of 2018, 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 the Palghar 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.

9 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)