

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1348 OF 2018**

Bhagwan Ashok Bhagade.

..Applicant.

V/s.

State of Maharashtra.

..Respondents.

Mr. Aniket U. Nikam, advocate for applicant.

Mr. Y.Y. Dabke, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 7, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 6/10/2017 in Crime No. 96 of 2017 registered at Igatpuri Rural Police Station for offence punishable under section 363, 366(A), 376(2)(i), 307, 506 of the Indian Penal Code and section 3(b), 4 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 6/10/2017 Gorakh Kadu, father of 6 years old girl Ms. X lodged a report at the police station alleging therein that on that day, he was called by the school authority as his daughter Ms. X was crying. He was informed about it by his wife

Talwalkar

and they reached the school. Teacher Umesh Rathod informed them that on that day, Bhagwan Bhagade i.e. present applicant had been to the school. He informed the staff that he happens to be the uncle of Ms. X and he needs to take her out for linking adhar card. The staff had allowed the child to go with the present applicant. She had gone along with the applicant and returned after half an hour and was crying and sobbing and therefore, they had called the parents. According to the first informant, the child had informed her parents that the applicant had taken her on his motor cycle to the agricultural land, attempted to strangle her and had touched her inappropriately i.e. to her private parts.

4 The victim was taken for medical examination. She had informed the doctor that the applicant had taken her from school on the ground that he wanted to link her adhar card. He had throttled her neck, threatened to kill her and inserted finger in her vaginal part.

5 The accused was arrested on the same day and he had denied the incident. There were no injuries present on her body. The victim had disclosed that she had called for help but nobody came there. She had specifically stated before the doctor that the applicant had not touched her private parts. There were no marks of sexual assault.

6 It is pertinent to note that the statement of the victim was also recorded under section 164 of the Code of Criminal Procedure, 1973 and she has disclosed before the Magistrate that it is true that the applicant had taken her from school to his agricultural land. He had throttled her neck and had informed her that he would eliminate her in case she

dares to cry. She had specifically stated that he had only attempted to throttle her and not touched any other part of the body and thereafter he had dropped her back to school. The applicant also disclosed that Rathod sir had called him in the school and had scolded him. Her parents had also scolded him.

7 In view of the statement of victim before the medical officer as well as under section 164 of the Code of Criminal Procedure, 1973, the applicant deserves to be enlarged on bail.

8 The observations are prima facie in nature and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for discharge application or at the trial.

9 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
 - (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
 - (iii) The applicant shall not reside at post Nandgaonsado, Igatpuri till framing of charge.
 - (iv) The applicant shall not tamper of the evidence.
- 10 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]