

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

BAIL APPLICATION NO. 1406 OF 2018

Vikas Pandurang Shinde

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ritesh Thobde for the applicant.

Mr. Rajan Salvi, APP for the State.

Mr. Pradeep Kadam, Police Naik, Fauzdar Chawdi Police Station,
present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 23rd OCTOBER, 2018.

P.C.:

. This is an application under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who has been arrested in C.R.No.07/2018 registered at Fauzdar Chawadi Police Station, District Solapur for offences punishable under sections 376(2)(i) of the Indian Penal Code and under sections 4, 8, 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Heard Mr. Ritesh Thobde, learned counsel for the applicant. He submits that the applicant has been falsely implicated in the aforesaid crime. He submits that though the victim claims that the applicant had

sexually abused her, the medical evidence does not support her contention. He has further stated that the applicant herein is a 19 year old boy and is ready to give an undertaking to reside beyond Faujdar Chawadi Police Station.

3. Mr. Rajan Salvi, learned APP concedes that the statement of the victim prima facie indicates that the applicant had taken her to his house and had sexual intercourse with her. He submits that the offence is of serious nature and hence, the applicant does not deserve to be released on bail.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The aforesaid crime was registered pursuant to the first information report lodged by the maternal aunt of the prosecutrix, who is a 09 year old child. The first information report indicates that on 04/01/2018, at about 11:30 a.m., the prosecutrix returned from school, changed her clothes and went to play. The prosecutrix did not return home and hence, the first informant went in search of her. Some time later, she saw the prosecutrix coming home with her friend.

When the first informant questioned the prosecutrix as to where she had gone, she told her that the applicant had taken her in his house, latched the door and thereafter removed her clothes, touched her body including her private parts and thereafter raped her.

6. In her statement recorded under section 161 as well as under section 164 of the Criminal Procedure Code, the prosecutrix has claimed that the applicant had taken her in his house, removed her clothes and touched her private parts and thereafter had sexual intercourse with her. The first informant had taken the prosecutrix to a private doctor – Supriya Birajdar. The statement of Dr. Supriya indicates that she had not examined the prosecutrix and had referred her to civil hospital. The records reveal that the prosecutrix was medically examined by the Doctors of the civil hospital. The medical report prima facie indicates that there were no injuries on the hymen. There was no bleeding and that there were no tears on the hymen. The Doctor has also opined that there was no evidence of injuries on the genitals or anus. The vaginal smear was sent for pathological examination and the report shows that no sperm was detected. The medical evidence does not prima facie corroborates the case of penetrative sexual assault.

7. The offence of sexual assault within the meaning of section 7 of the POCSO Act is punishable with a maximum imprisonment of five years. The applicant is a young boy of 19 years. He is in custody since 05/01/2018. His presence is no longer required for interrogation or investigation. He is a permanent resident of Solapur and there are no chances of his absconding. He has no criminal antecedents. The learned counsel for the applicant states that the applicant will not enter the jurisdiction of Faujdar Chawadi Police Station. The statement is accepted.

8. In the light of the above facts and circumstances and in my considered view the Bail Application is allowed on following terms and conditions :-

(a) The applicant who is arrested in C.R.No.07/2018 registered at Faujdar Chawadi Police Station, District Solapur is ordered to be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with one or two solvent sureties in the like amount.

(b) The applicant shall not enter the jurisdiction of Faujdar Chawadi Police Station, Solapur until further orders.

(c) The applicant shall furnish the details of his temporary address wherein he will reside during this period to the Investigation Officer as well as to the concerned Court.

(d) The applicant shall not interfere with the victim or the other witnesses in any manner and shall not tamper with the evidence.

(SMT. ANUJA PRABHUDESSAI, J.)