

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

BAIL APPLICATION NO.1621 OF 2018

Monu Mumtaz Khan

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

Ms. Sartaj Shaikh for the Applicant.

Mr. Ajay Patil, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 30th JULY 2018

P.C.:

1. This is an application under Section 439 of the Cr.P.C. for bail in C.R.No.223 of 2017 dated 20.08.2017 registered with Shahunagar Police Station, Mumbai under Sections 363, 376(1), 212, 419 of the Indian Penal Code r/w. Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).
2. Heard the learned counsel for the applicant and the learned APP. Perused the charge-sheet.
3. The prosecutrix was aged about 17 years and 10 months on the date of lodgment of the present crime and 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 facts mentioned in the first information report, statement of prosecutrix and other relevant statements is hereby avoided.

4. The FIR is lodged by the mother of prosecutrix on 20.08.2017. The prosecution case in brief is that, the applicant under the pretext of taking the prosecutrix to his parents for discussing their marriage infact took her to a lodge at Chunabhatti, Chembur and committed an offence as contemplated under Section 376 of IPC against her. As the prosecutrix came late to home, her mother enquired with her about the same upon which the prosecutrix confided with her and subsequently the present crime is registered.

During the course of investigation, the applicant came to be arrested on 22.08.2017 and after completion of investigation, the police have submitted charge-sheet.

5. The statement of prosecutrix indicates that, there was a love affair between the applicant and the prosecutrix and on the date of incident i.e. 19.08.2017 the applicant under the pretext of taking the prosecutrix to his parents for discussing their marriage, took her to a

lodge at Chunabhatti, Chembur and has committed the alleged present offence.

6. The statement of Manager of the said lodge indicates that, even on earlier occasions also, the prosecutrix alongwith the applicant had been to the said place. While narrating the history to the medical officer, the prosecutrix has stated that, with her permission the applicant had indulged into sexual intercourse with her.

7. After taking into consideration the material available on record, *prima facie* it appears that, on the date of lodgment of the crime, the prosecutrix had attained the age of understanding and discrimination and at her own free-will, she accompanied the applicant at the said lodge.

8. As noted earlier, the applicant is arrested on 22.08.2017 and since then he is in jail. The investigation of the present crime is completed and the police have already submitted charge-sheet. No fruitful purpose will be served by further keeping the applicant in incarceration.

9. In view thereof, the applicant can be released on bail.

Hence, the following order.

- a) The applicant be released on bail in C.R.No.223 of 2017 dated 20.08.2017 registered with Shahunagar Police Station, Mumbai 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 Shahunagar Police Station on every first Monday of the month between 11.00 a.m. to 1.00 p.m. till conclusion of trial.
 - c) The applicant shall attend all the dates before the Trial Court unless precluded by medical reasons.
 - d) The applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.
10. Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)