

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

BAIL APPLICATION NO. 1634 OF 2017

Marshad Tamijagdin Mandal ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Arun Rajput i/b Anjali Patil for the Applicant.
Mrs. A.A. Takalkar, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.
DATE : 18th JANUARY, 2018

P.C.:

. This is an application under Section 439 of Cr.P.C. for bail in C.R. No. 507 of 2016 registered with Bandra Police Station, Mumbai under Sections 376 and 506 of the Indian Penal Code and under Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act.

2 The first information report is lodged by the aunt of victim girl. The victim girl was aged about 9 years on the date of incident.

3 With a view to protect the identity of the victim girl who is minor and in consonance with the provisions of Section 228-A of the IPC, the detailed narration of facts mentioned in the first information report and the statement of victim girl are hereby avoided.

4 The record indicates that initially an offence under Section 354 read with

506 of the Indian Penal Code and under the provisions of the Protection of Children from Sexual Offences Act was registered against the Applicant. It is the case of the prosecution that, when the victim girl was sleeping in her house, the Applicant touched her inappropriately. When the said act was witnessed by her cousin sister namely Mrs. Farida Mulla, the Applicant administered threats to both of them. During the course of investigation, the Applicant came to be arrested on 05.10.2016 and after completion of investigation, the police have submitted charge-sheet. While submitting charge-sheet, the investigating agency has applied Section 376 of the Indian Penal Code to the present crime.

5 A perusal of statement of victim girl and statement of said Mrs. Farida Mulla, reveals that apart from the allegation of touching inappropriately when victim girl was sleeping in her house, no other overt act is attributed to the Applicant. In this background, it is prima facie difficult to accept the contention of the prosecution that an offence under Section 376 of the Indian Penal Code can be applied to the present crime.

6 After taking into consideration of the aforesaid fact, this Court is of the view that further incarceration of the Applicant is not required and the Applicant can be released on bail.

Hence, the following order:

- i) The applicant be released on bail in C.R. No. 507 of 2016 registered with Bandra Police Station, Mumbai on his furnishing PR bond of Rs.25,000/- with

one or two solvent local sureties in the like amount.

ii) After his release from jail, the applicant shall attend concerned Police Station once in month i.e. on every first Monday of the month between 11.00 a.m. to 1.00 p.m.

iii) The applicant shall also attend all dates before the Trial Court.

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

v) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)