

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

BAIL APPLICATION NO. 2167 OF 2017

Ali Akbar Hamid Shodar.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Shahed Ali Ansari i/b. Mr. Anjaykumar Ramajor Kori, advocate
for Applicant.

Ms. Veera Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 29, 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 22/11/2015 in
Crime No. 325 of 2015 registered with Kharghar Police Station, New
Mumbai for offence punishable under section 363, 376 of the Indian

Penal Code and sections 4, 8 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 7/11/2015 Ashida Mulla Ilahi Mulla lodged a report at the police station alleging therein that her children are residing at Pashchimpara, Garanbose, P.S. Basanti, Post Office Sundarban, South 24 Parganas, West Bengal. She resides at Kharghar alongwith her husband and two sons for the last 14 years. Her daughters had been to Kharghar to meet their siblings and their parents since there was vacation to their school. That on 6/10/2015 at about 10 a.m. she received a phone call on her cell from her younger daughter Rabia informing that elder sister Ms. X was taken by the present applicant and that she had not returned home. The first informant enquired in the nearby vicinity. She has disclosed that the applicant was acquainted with their family and used to visit their house occasionally. Ms. X was hardly 13 years old. The applicant happens to be her distant relative. On the basis of the

said report, Crime No. 325 of 2015 was registered under section 363 of the Indian Penal Code on 7/11/2015.

4 Ms. X was found on 22/11/2015 since the police was keeping a track on the cell phone of the present applicant. That the victim was rescued. She was sent for clinical examination to Navi Mumbai Municipal Corporation's General Hospital Vashi. On 23/11/2015 the victim had disclosed that she was abducted by the present applicant on 6/11/2015 while she was going to market for purchasing shampoo. She was taken to Turbe and remained there till 22/11/2015. The applicant had sexual intercourse with her several time. She had called upon her mother on the cell phone of the present applicant and that is how she was traced by the police on 23/11/2015. Statement of the victim was recorded. She has disclosed to the police that she was acquainted with the present applicant as he used to visit their house quite often. On 6/11/2015 when she was proceeding towards market for purchasing shampoo, he had met her on the way and had told her that he would take her

for drive. She had denied to oblige. However, taking into consideration the relations between the parties, the victim had accompanied him without having any knowledge that she would be taken out of station. The victim had insisted upon him to drop her at her place to Kharghar but she could not contact any one and finally she has managed to call her mother on the cell phone of the applicant and was finally rescued. The applicant was fully aware of the fact that the victim happens to be a minor girl who is hardly 13 years old. She could not speak any other language except Bengali. She could not take any efforts to rescue herself. The medical case papers also clearly indicates that the victim had to undergo sexual intercourse.

5 The learned Counsel for the applicant has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the case of **Hussain & anr. v/s. Union of India reported in 2017(3) SCALE 460** It is submitted that in fact, the Hon'ble Apex Court has requested the trial court to ensure that the bail applications are decided as far as

possible within one week. Here the applicant has been charge-sheeted. There is no question of considering the bail application.

6 The learned Counsel for the applicant vehemently submits that the bail not jail is the rule. The applicant has been in custody for almost 2 years and therefore, he should be enlarged on bail.

7 It is a matter of fact that there has been delay in trial. However, the applicant is facing prosecution under the provisions of POCSO Act, 2012. That the trial Court is making every effort to expedite the trial. The present application seeking enlargement on bail is filed on 19/9/2017. The matter was not circulated and on 12/10/2017 due to paucity of time, the matter could not be heard. None appeared for the applicant on 14/12/2017 and therefore, the matter was adjourned to 29/1/2018.

8 The learned Counsel for the applicant submits that further incarceration is unwarranted as there is no recovery to be caused and

the applicant is languishing in jail for 2 years. In fact, the victim has sustained injury not just physically but it is an injury to her soul and she has to live with that stigma for all her life. It is in these circumstances that the applicant does not deserve to be enlarged on bail.

9 The application being sans merits stands rejected. The Special Learned Court seized with Special Case (POCSO) No. 21 of 2016 pending before the Additional Sessions Judge, Raigad/Alibag shall make every efforts to expedite the trial.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)