

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

BAIL APPLICATION NO. 2444 OF 2018

Asif Hazrat Saab Shaikh

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Hussien Shaikh for the applicant.

Ms. A.A. Takalkar, APP for the Respondent-State.

Mr. Rane, PSI, Nagpada Police Station.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 27th SEPTEMBER, 2018.

P.C.

1. This is an application for bail. Applicant is arrested in connection with C.R. No. 88 of 2018 registered with Nagpada Police Station for the offence punishable under Sections 363 and 376(i)(j) of Indian Penal code and Sections 4, 8 and 12 of POCSO Act.

2. The prosecution case is that victim is aged about 15 years and she was supposed to appear for SCC examination and she was attending her classes. On 17th February, 2018 at about 11.30 a.m. she called her mother on phone and informed her that she was going for roaming with her friends and told her mother not to come to fetch her. The complainant's mother asked her to stay at

School. The victim was not in school nor she returned home. She could not be traced. Mother lodged complaint with Police Station. Offence was registered on 18th February, 2018 vide C.R. No. 88 of 2018 under Section 363 of Indian Penal code. On 19th February, 2018 victim gave call to her father and met them near school. She was under influence of liquor. She was sent for medical examination. Statement of victim was recorded. She stated that she had informed her mother that she wants to go out with friends. She called her friend Asif Shaikh on his mobile phone. He did not receive the call. The plan to go out was cancelled. She alone went to Nariman Point. She again called Asif. He told her to come to Abdul Shah Baba Darga. She went there. Asif came with his scooter. Asif took her to Pune without informing her where he is taking her. They went to Darga. Since it was late evening he took her to hotel. Asif booked one room. He had sexual intercourse with her. On 19th February, 2018 both of them returned to Mumbai and Asif dropped her at Raey road Darga. She was feeling guilty. Hence, she went to wine shop and purchased liquor. She consumed liquor.

3. Submission of the applicant's advocate is that victim had volunteered to accompany applicant and both of them had gone to

Pune. Allegedly, they had stayed in the hotel for two days where both of them had sexual relationship. Although, the victim was minor and aged is about 15 years at the time of incident, she voluntarily accompanied him and relationship was consensual. It is submitted that investigation is completed and chargesheet has been filed.

4. Learned APP submitted that victim was minor at the time of incident. She was not aware as to where the applicant was taking her. She had not consented for sexual relationship. The accused had sexually assaulted her without her consent. Assuming that there was consent, the victim was minor at the time of incident. Consent is immaterial. The accused was matured person and he should not have indulged in the said act.

5. I have gone through the chargesheet. On perusal of the statement of the victim, it is apparent that on the date of incident she had informed her mother that she would like to go out with her friends. She went to Nariman Point alone. She called the applicant on mobile twice and then met him at Darga. Taking into consideration the fact that the applicant and the victim had travelled from Mumbai to Pune, it is apparent that the victim was aware as to where the applicant has allegedly taken her. The

victim was minor at the time of incident. However, both stayed in hotel till 19th February, 2018. There was physical relationship between them.

6. Taking into consideration factual aspect of the case and considering that the applicant is in custody from the date of arrest, investigation is completed and chargesheet has been filed, case for grant of bail is made out.

ORDER

- i) Criminal Bail Application No. 2444 of 2018 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 88 of 2018 registered with Nagpada Police Station on furnishing P.R. Bond of Rs.25,000/-with one or more sureties in the like amount;
- iii) The applicant shall attend Nagpada Police Station once in a month on first Monday between 10 a.m. to 12 noon till further order;
- iv) The applicant shall not approach the victim or her family members;
- v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;
- v) The application stands disposed off.

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.09.29
16:00:53 +0530

(PRAKASH D. NAIK, J.)