

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

BAIL APPLICATION NO.2892 OF 2018

Ashok Murlidhar Tayade	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Anant Vadgaonkar i/b. Mr. C.S. Patil for the Applicant.
Mrs. J.S. Lohokare, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 31st OCTOBER, 2018.

P.C.:-

This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who has been arrested in C.R. No.275 of 2017 registered with Ramdas Peth Police Station, Akola, for offences punishable under Sections 376, 377, 417 and 471 of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Anant Vadgaonkar, the learned counsel for the Applicant and Mrs. J.S. Lohokare, the learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR dated 13.7.2017 lodged by the prosecutrix, who is about 23 years of age. The first informant claims that the Applicant herein had forcible sexual intercourse with her in the year 2011 when she was about 16 years of age. Subsequently, he had proposed to marry her and thereafter they had lived together at Pune. The FIR prima facie reveals that in the year 2013 while she was living with the Applicant, she had learnt that the Applicant was already married and that he had two children. The records further reveal that despite knowing the said fact she had continued having relationship with the Applicant and that she had given birth to a child in the year 2012. She has stated that the Applicant has been ill-treating her. She has stated that in the birth certificate of the said child the Applicant has falsely stated name of the mother as Nita Tayde. The first informant has claimed that the Applicant has been harassing her mentally, physically and having forcible as well as unnatural sex.

4. The first information report prima facie reveals that the relationship between the Applicant and the first informant was consensual. The applicability of provisions of POCSO Act is doubtful as

the said Act has come into force in the year 2012 while allegations are of the year 2011. The Applicant is in custody since 1.8.2017. The investigation is concluded and the charge sheet has already been filed. Considering the nature of allegations, in my considered view no purpose will be served by detaining the Applicant in custody.

5. Under the above facts and circumstances, the application is allowed on following terms and conditions:-

- (i) The Applicant, who has been arrested in C.R. No.275 of 2017 registered with Ramdas Peth Police Station, Akola, shall be released on bail on furnishing bail bonds of Rs.25,000/- with one or two solvent sureties in the like amount.
- (ii) The Applicant shall furnish his permanent as well as temporary address, if any, and his contact details to the concerned investigation officer.
- (iii) The Applicant shall not change his residential address without prior intimation to the concerned investigation officer.

(SMT. ANUJA PRABHUDESSAI, J.)