

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2705 OF 2017**

Shri Aaba Hindurao Salunke	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2716 OF 2017**

Shri Subhash Hindurao Gosavi	..Applicant
vs.	
The State of Maharashtra	..Respondent

Mr.Ganesh Gole i/b. kMr. Ateet Shirodkar, for the applicant in BA No.2705 of 2017.

Mr. Tanaji Mhatugade for the applicant in BA No.2716 of 2017.

Ms. P.P.Shinde, APP, for the State.

Ms. Pradnya Deshmukh, API, Shahapur Police Station present.

**CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 17th January, 2018.**

P.C. :

1. These are the applications under section 439 of the Code of Criminal Procedure, 1973.
2. The applicant in Criminal Bail Application No.2705 of 2017 and Criminal Bail Application No.2716 of 2017 are arrested on 3.8.2017 in Crime No.171 of 2016 registered at Shahapur Police Station. The

investigation is completed and charge sheet is filed under Sections 376(2) (i), 363 read with section 34 of the Indian Penal Code and under Sections 4,6 and 8 of Prevention of Children from Sexual Offences Act, 1912.

3. It is the case of the prosecution that on 19.10.2016, one Nagnath Patil, resident of Azad Nagar Tardal, had lodged a report at the police station that his youngest daughter Mx.`X' was studying in Std. VII at the relevant time. He used to scold his youngest daughter for not working at home and therefore, she had left the house and she had returned on her own after 3 – 4 days.

4. According to the complainant, on 29.9.2016, his daughter had informed him that she was going to answer nature's call. She did not return home. They had searched for her at the places of all the relatives and had finally lodged a report at the police station which was initially registered as Missing Complaint on 19.10.2016. An offence was registered under Section 363 of the Indian Penal Code. On 25.7.2017, the missing girl had called upon her father from Kudal. She was traced and thereafter her statement was recorded by the police.

5. The girl had disclosed to the police that since her father used

to assault her mother under the influence of alcohol, her mother had left the house when she was a child. According to her, on the date when she left the house, she had called her father from Shahapur. He had told her that he would come to pick her up, however, he did not turn up and therefore she started walking towards the house. She met 3 unknown persons who informed her that her father has called her and therefore she accompanied him in his car. In the course of conversation, they had impressed upon her that they were acquainted with her father. They had confined her in one room. They used to feed her. The said 3 persons had sexually abused her. Thereafter, they had abandoned her. She wanted to return home. However, she was misled by several people. The said persons had taken her to another village i.e. to Sangrul and had left her in the custody of an old woman who assured her that she would be taken to Ichhalkaranji, but the old woman had taken her to the house of one Vilas who had declared himself as a person who has committed murder and had threatened her. He had sent her to the house of his relative i.e. Gudiya. Gudiya had sent her to the house of one Subhash i.e. the applicant in Criminal Application No.2716 of 2017. She has alleged that Subhash had told her he would drop her at her parents' house. he had taken her on his motorcycle. On the way,

by the side of the road, in the bushes, she was ravished by Subhash. He had intercourse with her and had threatened her of dire consequences in the eventuality she had disclosed the incident to anybody. Thereafter, he had left her in the house of another person i.e. Dhanya who was collecting scrap. That Dhanya used to sexually abuse her everyday and had intercourse with her. She was in Ghadinglaj for some time. Thereafter, she was sent to the house of Sagar, where she was working as a house maid and look after his children. Sagar happens to be the son of the applicant in Criminal Bail Application No.2705 of 2017. It is alleged that the applicant used to visit the house of his son. He was alone. He used to molest her by touching her inappropriately. According to her, when she was washing clothes in the house of Sagar, she had found Rs.200/- which she had taken. Therefore, she had gone to the S.T. stand and then called upon her father.

6. The learned counsel for the applicant in Criminal Bail Application No.2705 of 2017 has submitted that taking into consideration the allegations as they are without addition or subtraction, it can, at the most, be said that the applicant has committed an offence punishable under section 8 of the Protection of Children from Sexual Offences Act.

7. That the applicant is more than 65 years old. he is in the

custody since August 2017 and the punishment contemplated for an offence punishable under section 8 is not less than 3 years, but which may extend to 5 years and therefore the learned counsel for the applicant prays for grant of bail.

8. As far as the Criminal Bail Application No.2716 of 2017 is concerned, the learned counsel for the applicant has drawn attention of this Court to the clinical examination report of the victim in which column No.12(C) of the said report shows that hymen was intact. The learned counsel submits that the very fact that hymen was intact would falsify the allegation of the victim. That she was sexually assaulted by so many people. According to the learned counsel, this can be a figment of imagination of the victim and, therefore, the same cannot be relied upon to deny bail to the applicant.

9. The learned APP, upon instructions from the Investigating Officer, submits that the victim girl was in state of trauma. However, she had disclosed to the Investigating Officer the pains that she had gone through during the said period till she returned home. The learned APP also submits that the victim girl was hardly 14 years old at the time of incident. According to the learned APP, the Investigating Officer, has written a letter

to the Medical Officer who had examined the victim and the Investigating Officer has put several queries to the medical officer which are not yet answered.

10. The learned APP submits that besides the medical report, there is no reason to disbelieve the victim at this stage and, therefore, prays that the applications filed by both the applicants be rejected in the interest of justice.

11. As far as the applicant in Criminal Bail Application No.2705 of 2017 is concerned, it is true that the allegation levelled by the victim is to the extent that she was inappropriately touched by the applicant. The applicant is in custody for more than six months and hence the applicant who happens to be a senior citizen deserves to be enlarged on bail.

12. As far as the applicant in Criminal Application No.2716 of 2017 is concerned, taking into consideration the submissions of the learned APP and upon perusal of the statement of the victim, without addition or subtraction, the applicant does not deserve to be enlarged on bail. In a case under Section 376 of IPC, medical evidence would be only for the purpose of corroboration of the allegations levelled against the accused. As on today, this Court is of the opinion that there is no reason to disbelieve the

minor girl and hence the application deserves to be rejected.

13. It is made clear that the observations made hereinabove are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration in any other proceedings including the trial.

14. Criminal Bail Application No.2705 of 2017 is allowed. The applicant – Aaba Hindurao Salunke be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount. The applicant shall not tamper with evidence.

15. Criminal Bail Application No.2716 of 2017 stands rejected.

(SMT. SADHANA S.JADHAV, J.)