

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

BAIL APPLICATION NO. 2760 OF 2017

Aniket Anil Chaudhari	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Satyavrat Joshi, Advocate for Applicant.
Ms. Veera Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 21, 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 was arrested on 19/8/2016 in Crime No. 338 of 2016 registered at Kondhawa Police Station initially for offence punishable under Sections 363 and 354 of the Indian Penal Code. However, the investigation is completed and charge-sheet is filed against the applicant for the offence punishable

under Sections 363, 354, 376 of of the Indian Penal Code and under Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act.

3 It is the case of the prosecution that on 18/8/2016 Smt.Savita Avale lodged a report at Kondhawa Police Station alleging therein that her minor daughter who was studying in 8th standard at Bharti Vidyapeeth Kanyashala, was missing from the house. She has specifically stated that on 17/8/2016 they had been to the house of Vijay Vaydande i.e the brother of the first informant and she had noticed that her daughter was sending text messages to someone continuously. Therefore, she had questioned her and also read the messages, wherein, it was found that she was exchanging messages with the present applicant who happens to be her relative and resident of Kothrud. On 18/8/2916 at 9.00 a.m. the family members realised that she was not at home.

4 In the course of investigation, they had learnt the whereabouts of the present applicant and Ms.X. They were found in the house of friend of applicant Vijay at Ulhasnagar. The statement of Ms.X was recorded by the police on 19/8/2016, wherein, she had specifically stated that on 17/8/2016 they had been to Kondhawa to her maternal uncle's house. She had called upon the present applicant. Her maternal uncle and her mother had read the messages and suspected some intimacy between them and therefore had scolded her. On 18/8/2016 she left the house in angry mood. She called upon the applicant near City Pride at Karve Road and thereafter they both had left. They had been to the house of Vijay at Ulhasnagar. The applicant had attempted to make advances towards her while travelling to Mumbai. The mother of his friend was also at home. At night, Ms.X had slept with the mother of Vijay, whereas Vijay and Aniket i.e. the present applicant had slept outdoors. On 19/8/2016 in the morning, the police had been to the house of Vijay and had taken them to the Police Station. She had categorically stated that he had not established any physical relations during the intervening night.

Ms.X was sent for clinical examination. She had specifically informed the doctor that the applicant happens to be her relative. Her uncle had a doubt about their relationship and therefore he had assaulted her on 17/8/2016. On 18/8/2016 Ms.X and the applicant had eloped to Mumbai as they were apprehending fear of being assaulted again. It is specifically mentioned as follows :

“ No history of penetration sexual intercourse given.
No history of physical assault by accused.”

5 The statement of the victim was recorded under Section 164 of the Cr.PC. It is a matter of record that the statement does not form a part of the compilation of the charge-sheet. The learned A.P.P. submits that the copy will be given to the learned Counsel for the applicant.

6 Upon perusal of the statement recorded under Section 164 of the Cr.P.C. it appears that it is in consonance with the statement under Section 161 of the Cr.P.C. with some improvement. She had voluntarily stated that she was not sexually assaulted by the

present applicant. The Magistrate had questioned her at the end of the statement as to whether the accused had established physical relationship and at that time she had stated that in January 2016 he had taken her to the room of his friend and at that time he had sexual relations with her. However, it is apparent that she had maintained silence at least till August 2016 and in August 2016 she had voluntarily called upon the applicant and left the house with him. It is a matter of record that in the intervening night of 18/8/2016 and 19/8/2016 she was staying in the house of their friend Vijay and had slept with his mother and therefore there was no occasion for any sexual intercourse during the intervening period.

7 In the above mentioned facts coupled with the fact that the applicant is in custody since 19/8/2016 and that the investigation has completed and charge sheet is filed, this Court is of the opinion that the applicant deserves to be enlarged on bail. However, it is made clear that observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same

shall not be considered for quashing of FIR, discharge application or at the time of trial.

8 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall not reside at Kothrud till the completion of the trial and shall report to Shivaji Nagar Police Station on 1st Sunday of every month till the framing of charge.
- (iv) Leave to amend is granted. Amendment to be carried out forthwith.
- (v) The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)

