

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 49 OF 2019**

Nilesh Dattatray Shinde

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Rupesh Nalawade for the Applicant.

Ms. J.S. Lohokare APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 13th MARCH, 2019.

P.C.:-

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. 541 of 2018 dated 16th August, 2018 registered with Dahisar Police Station under Sections 376, 354, 452, 323 of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act).

2 Heard the learned counsel appearing for the Applicant and the learned APP. Perused the charge-sheet.

3 The first information report is lodged by the prosecutrix herself who was aged about 17 years 8 months old on the date of the lodgment of the crime. As the prosecutrix was a minor, with a view to protect her identity and in consonance with the provisions of Section 228(A) of the Indian Penal Code and Section 33(7) of the POCSO Act, the detailed narration of facts mentioned in the first information report and in the statement of the victim girl is hereby avoided.

4 In the first information report the prosecutrix has disclosed an offence as contemplated under Section 354 of the Indian Penal Code however, in her supplementary statement which is recorded subsequently after medical examination, she has alleged an act as contemplated under Section 376 of the Indian Penal Code read with the provisions of POSCO Act which deals with penetrative sexual assault.

 The record indicates that, at the time of giving the information to the Medical Officer on 18th August, 2018, the prosecutrix has disclosed that she was having relationship with the Applicant for a substantial period and the Applicant had promised her to marry and thereafter had peno-vegal intercourse with her.

5 The record indicates that, on the date of lodgment of the

crime, the prosecutrix had attended the age of understanding and discrimination. It is because she was just below the age of 18 years, the provisions of POSCO Act have been applied to the present crime.

The Applicant is arrested on 16th August, 2018 and since then he is in jail. The investigation of the present crime is already completed and the police have submitted charge-sheet. The Applicant was aged about 20 years on the date of commission of offence. It is submitted that, there are no antecedents at the discredit of the Applicant. No fruitful purpose will be served by further keeping the Applicant in incarceration.

6 In view of the above, the Applicant can be released on bail.

Hence the following order:-

- a) The Applicant shall be released on bail in CR No. 541 of 2018 dated 16th August, 2018 registered with Dahisar Police Station on his furnishing PR bond of Rs.15,000/- with one or two local sureties in the like amount.
- b) The Applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.

- d) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

7 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)