

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

Cri. BAIL APPLICATION NO. 146 OF 2019

Japhar Aayatali Shaikh

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Ms. Anjali Patil, Advocate, for the Applicant.

Mrs. G. P. Mulekar, APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : MARCH 07, 2019.

PC :

1 The applicant is seeking bail in CR No. 492 of 2018, registered with Sakinaka Police Station, for the offences under sections 376, 506 (2), 114 of the Indian Penal Code, read with sections 4 and 8 of POSCO Act, 2012.

2 The first information report was lodged by the mother of victim on 02.08.2018. It is alleged by the complainant that the victim was found in disturbed state of mind and hence, enquiries were made with her on 01.08.2018. She had informed that on 13.07.2018, the victim had left with the co-accused - Shabad on his motorcycle. The applicant-accused also accompanied them. The Applicant

took her to a place, where the applicant had allegedly tied the hands of victim and the co-accused had sexual intercourse with the victim. The complainant also stated that since last one year, the victim used to get phone calls from the co-accused-Shabad and she had suspected that the victim was having affair with him and that the complainant had warned her daughter not to talk to co-accused Shabad. Statement of the victim was recorded on 16.08.2018 in which she had stated that she had liking for co-accused-Shabad. She also narrated the incident occurred on 13.07.2018.

3 The applicant was arrested on 02.09.2018. Investigation is completed and the chargesheet is filed.

4 Learned counsel for the applicant submitted that the age of victim is around 17 years, which is apparent from the school record, which fact is also disclosed by the victim as also with regard to medical examination performed by the doctor. Learned counsel for the applicant also pointed out that the co-accused - Shabad had preferred an application for bail before the Sessions Court in which the complainant had filed an affidavit, stating that the FIR was lodged by her in anger and the complainant is going to approach the High Court for quashing the said complaint. The said application for bail is pending in the Sessions Court.

5 Learned APP submits that the victim was minor at the time of the incident. A specific role has been attributed to the applicant. The applicant has aided and abetted the co-accused in the crime.

6 In the first information report, complainant had stated that the victim was having love affair with co-accused-Shabad. As per the FIR and the statement of the victim, the victim had left with the co-accused on 13.07.2018 and the incident had occurred on the same day. The role attributed to the applicant is tying hands of the victim and facilitating the co-accused to commit the sexual assault. The incident had occurred on 13.07.2018; whereas the FIR was lodged on 02.08.2018. The victim has also stated that she had liking for co-accused-Shabad. The applicant has no criminal antecedents.

7 Considering the factual matrix of the matter, a case for grant of bail is made out by the applicant. Hence, I pass following order :

ORDER

- i. Bail Application No. 146 of 2019 is allowed and disposed of.

- ii. The applicant is directed to be released on bail in connection with CR No. 492 of 2018, registered with Sakinaka Police Station, on furnishing PR Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- iii. The applicant is permitted to furnish cash security in the sum of Rs. 25,000/- for a period of six weeks.
- iv. Applicant shall report to concerned police station once in a month, on first Saturday of month between 11 a.m. to 1 p.m. till further orders.
- v. The applicant shall not tamper with prosecution evidence.

(PRAKASH D. NAIK, J.)

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