

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

CRIMINAL BAIL APPLICATION NO. 251 OF 2019

Shadab @ Jamil Munir Khan	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Pravin Padave for Applicant.
Ms.J.S. Lohokare, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 8th April 2019.

P.C. :

1] This is an application under Section 439 of the Code of Criminal Procedure for bail in C.R. No. 492 of 2018 dated 02/08/2018 registered with Sakinaka Police Station, Mumbai, for the offence punishable under Section 376, 506(II) and 114 of the Indian Penal Code and Section 4, 8 of the Protection of Children from Sexual Offences Act, 2012.

2] Heard the learned counsel for the applicant and the learned APP. Perused the chargesheet.

3] The age of the prosecutrix is about 17 years. With a view to protect the identity of the prosecutrix and in consonance with the provisions of Section 228(A) of the Indian Penal Code and under Section 33(7) of the Protection of Children from Sexual Offences Act, the detailed narration of facts mentioned in the first information report and the statement of the prosecutrix are hereby avoided.

4] The first information report is lodged by the mother of the prosecutrix on 2nd August 2018. It is alleged that the complainant found victim in disturbed state of mind. Therefore, she made inquiries with her. It was informed to the complainant that on 13th July 2018, the applicant had taken the prosecutrix at an isolated place and thereafter committed forcible sexual assault on her. In the present crime, the co-accused Jafar Shaikh assisted the applicant initially by tiding the hands of the victim and further by guarding the premises, wherein the offence was committed. The record indicates that the prosecutrix before the Medical Officer has stated her age as 17 years. In her statement, the prosecutrix has stated that she was having liking for the applicant and at the request of the applicant, she willingly accompanied him. The applicant is aged about 18 years. *Prima-facie*, it appears that the

applicant and the prosecutrix were having an affair. It further appears that the prosecutrix had attained the age of understanding and discrimination and on the date of alleged incident and she herself had accompanied the applicant willingly. The medical record of the prosecutrix *prima-facie* does not support case of forcible sexual assault on her.

5] The applicant is in jail since 3rd August 2018. After completion of investigation, the police have submitted the chargesheet.

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

Hence, the following order :-

- (i) The Applicant shall be released on bail in connection with C.R. No. 492 of 2018 dated 02/08/2018 registered with Sakinaka Police Station, Mumbai, on his furnishing P.R. bond of Rs.20,000/- with one or two separate solvent local sureties in the like amount.
- (ii) After his release from Jail, the applicant shall attend all the dates before the trial Court, unless exempted by the concerned Court.
- (iii) In case of two consecutive defaults, the Prosecution is at liberty to file an application for cancellation of bail.

- (iv) Applicant shall not tamper with the evidence and/or interfere with the process of investigation.
- (v) Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]