

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

BAIL APPLICATION NO. 542 OF 2019

Ranjit Ramesh Natekar	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Rajiv Patil, Senior Advocate, i/b Mr. Omkar V. Warange for the Applicant.

Ms. S.S. Kaushik, A.P.P. for the Respondent – State.

CORAM : P.N. DESHMUKH, J.

DATED : 22nd APRIL, 2019.

P.C. :

1 This application is by accused involved in Crime No.131 of 2018 registered with Mahad City Police Station for the offences punishable under Sections 370, 376(2)(J)(N), 354 r/w 34 of I.P.C., Sections 4 and 8 of POCSO Act and Sections 4 and 5 of PITA.

2 Learned Counsel for applicant submitted that from the statement of prosecutrix, involvement of many persons in sexually exploiting her is established with her wish. It is pointed out that in the entire statement it is nowhere revealed that applicant at any point of time sexually exploited prosecutrix against her wish. With the contents of her complaint and additional statement, learned Counsel for the applicant has

also pointed out that from the contents of her statement in fact doubt is created on the truthfulness of her report upon which offence is registered. By referring to the medical report it is pointed out that before her medical examination, she had physical relations with multiple persons during the period of one year and, has therefore, contended that as such said piece of evidence cannot be considered against applicant alone. With reference to the age of girl, it is pointed out that as per her birth certificate, though she is couple of months less to attain majority, from the doctors certificate on clinical examinations, her age is stated to be 16 to 18 years. It is, therefore, contended that on this aspect also case of prosecution does not establish applicant's involvement to have sexually exploited the victim girl without her consent and prayed that as charge-sheet is filed, application be allowed by imposing suitable conditions.

3 Learned A.P.P. had mainly opposed the application on the ground that victim is minor and as such though consented for having physical relations with applicant, applicant cannot escape from the charge levelled against him in this charge-sheet. However, has admitted that during the course of investigation, prosecutrix was referred for determination of her age, to the Rural Hospital, Mahad, where she was clinically examined and is certified to be aged between 16 to 18 years.

4 In view of fact involved in this application as aforesaid, perusal of report would reveal that before she came in contact with applicant through his friend Sumit, resident of Poladpur, she had indulged into physical relations at number of occasions through co-accused Swati Dhumal, during which period she had accompanied other persons at different places on accepting consideration. In fact tenure of her statement would reveal that prosecutrix was willingly indulged into these activities due to her poor financial condition. Applicant appears to have come in contact with her on his mobile, however, no call detail records of applicant's sim card with that of prosecutrix appears to have been obtained nor CDRs in respect of calls made by applicant's friend Sumit to him, are on record. It is to be noted that from the statement of prosecutrix her involvement with applicant is on her own wish since was short of money and has, therefore, maintained physical relations with applicant.

5 Though the statement runs into three pages involving other persons, applicant's involvement is limited as aforesaid. In her statement on the basis of offence is registered, though she claims that applicant had called her at his house situated at Gavalali, Mahad and do not refer to any other person variance to said statement, prosecutrix in her supplementary statement recorded two days thereafter, involves one of the friend of applicant, whose name she does not know and alleged to have called her to

remote place in Mahad called Savitri Enclave. In her earlier statement, there is no such fact mentioned.

6 Considering the statements as aforesaid, thus, it is crystal clear that at no point of time applicant had sexually exploited the girl against her wish. Which fact is further found substantiated as from the medical report, said girl had claims to have physical relations with multiple persons during the period of one year since her date of examinations on 15.10.2018. According to the statement of the victim she is indulged in this activity for earning money. In that view of the matter and from the birth certificate though prosecutrix is couple of months short to age of 18, from the medical certificate issued by Rural Hospital, Mahad, since her age is certified to be between 16 to 18 years, said piece of evidence is required to be considered in favour of applicant as the age certified by Medical Officer from said hospital is with margin of error of two years on both sides. In that view of the matter, when the prosecutrix is found to be major and as according to her statement, she on her own got indulged in maintaining physical relations for earning money, not only with applicant on one occasion but on many persons during the period of one year, there is no propriety in curtailing applicant liberty by keeping him behind the bars. The application is in fact is also liable to be allowed as from the statement of applicant's mother, it is found that one night as some boy in the late hours

in the night is found to have visited prosecutrix in her house and as he was seen by the residence and neighbours who came out of their respective houses, when said boy ran from the terrace of the house, prosecutrix was enquired by her parents upon which she disclose her involvement in said affairs since one year prior. It is, therefore, found that had no such incident would have occurred in that night, prosecutrix would have never complained of the same. In the circumstances, application is allowed.

ORDER

(i) Applicant shall be released on bail in C.R. No.131 of 2018 registered with Mahad City Police Station for the offences punishable under Sections 370, 376(2)(J)(N), 354 r/w 34 of I.P.C., Sections 4 and 8 of POCSO Act and Sections 4 and 5 of PITA, on executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount;

(ii) While on bail, applicant shall mark his presence with Mahad City Police Station once in three months on the first day of each such month between 10.00 a.m. to 1.00 p.m. pending trial;

(iii) Trial Court shall not get influence with the observations as aforesaid and shall independently evaluate the evidence at the time of trial.

(P.N. DESHMUKH, J.)