

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

CRIMINAL WRIT PETITION NO.825 OF 2019

Hussain Nazir Shaikh @ Ali

... Petitioner

Vs

The State of Maharashtra & anr.

... Respondents

Mr.Ganesh Bhujbal for the Petitioner

Mr.A.R. Patil, APP, for the Respondent – State

Ms.Vaishali Sajjan, PSI, Kondhwa police station – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 15, 2019

P.C.:

1. In this Writ Petition, the order dated 23.1.2019 passed by the learned Additional Sessions Judge, Pune below exh. 1 in Spl.M.A. No.58 of 2018, thereby cancelling the bail granted to the petitioner/accused and directing him to surrender himself before Kondwa Police Station, in C.R. No.548 of 2018, is challenged.

2. Earlier, the petitioner/accused was prosecuted for the offence under section 324, 504, 506, 363, 143, 147 r/w section 34 of the Indian Penal Code. Subsequently, after recording the statement and collecting the medical papers of the victim, the

Investigating Officer came across vaginal penetration on the basis of the said certificate. Therefore, the Investigating Officer moved an application for adding section 376 of the Indian Penal Code and also sections 4, 8, 12 of the Protection of Children from Sexual Offences Act. After hearing both the prosecution and the accused, the learned Judge cancelled the bail granted earlier.

3. The learned Counsel for the petitioner submits that it is a case of love affair between the prosecutrix and the accused. The prosecutrix was 17 years old at the time of the incident and, therefore, the order of adding these sections and cancellation of bail is erroneous.

4. Mr.Patil, the learned Prosecutor, submits that it is premature to say anything about the ingredients of the sections at this stage and the accused is required to surrender before the police and the order of the learned Magistrate is justified.

5. Heard. The submissions of the learned Prosecutor are correct. The police have applied sections 376 of the Indian Penal Code and also sections 4, 8, 12 of the Protection of Children from Sexual Offences Act pursuant to investigation and, therefore, it is

necessary for the learned Judge has rightly cancelled the bail order which was earlier granted and rightly directed the petitioner/accused to surrender to the police. No interference is required with the impugned order.

6. Hence, the petition is dismissed.

(MRIDULA BHATKAR, J.)