

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

BAIL APPLICATION NO. 633 OF 2019

Vijay Anil Waghmare	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Ms. Hema M. Whaval for the Applicant.

Mr. Prashant Jadhav, A.P.P. for the Respondent – State.

CORAM : P.N. DESHMUKH, J.

DATED : 26th MARCH, 2019.

P.C. :

1 This application is filed by one of the co-accused involved in Crime No.321 of 2018 registered for the offences punishable under Sections 363, 366(A), 376, 323, 504, 506 r/w. 34 of I.P.C. and Sections 3, 4 of POCSO Act.

2 Learned Counsel for applicant submitted that initially missing complaint was filed by father of prosecutrix who is aged 16 years and 9 months and, thereafter, on her statement, offence came to be registered. It is submitted that according to the complaint, no role is attributed to applicant to have sexually assaulted complainant. It is further contended that charge-sheet in the present crime is already filed and one of the co-accused Sajid, against whom there is similar case as though named in

F.I.R. like applicant, is not attributed with sexual assault, is released on bail by this Court by its order dated 11.01.2019.

3 It is, therefore, prayed that application be allowed by imposing suitable conditions.

4 Learned A.P.P. submitted that there is direct evidence against applicant and from the statement of prosecutrix, who is admittedly minor, applicant's involvement is clearly established and as thus, prayed that application be rejected.

5 Documents filed with the application would reveal that on the basis of report by father of prosecutrix, initially offence was registered for the offence punishable under Sections 363 however, according to further case of prosecution, after prosecutrix was left by co-accused Ujwala near her house on 30.08.2018 in the evening, her statement is recorded on 31.08.2018 and, thereafter offences punishable under Sections 366A, 376, 323, 504, 506 r/w 34 of I.P.C. and Sections 3, 4 of POCSO Act came to be added in the said crime.

6 From the statement of prosecutrix, role of applicant is that he was introduced by co-accused Ujwala to prosecutrix who is friend of co-accused Dashrath Chavan. It is further alleged that Vijay i.e. applicant

informed prosecutrix to have physical relation with co-accused. Except for this, it is no case of prosecution that applicant had physical relation with the minor prosecutrix against her wish. With reference to case of applicant seeking bail of parity with co-accused Sajid when considered reveals that only role attributed to said co-accused is that in a room where another co-accused Rizwan Ansari had sexually assaulted prosecutrix, he was present in that room but as already said earlier, had not indulged into any such act, and is released on bail.

7 In that view of the matter, applicant has made out a case for grant of bail on merits as well as on parity. Hence, following order :-

ORDER

(i) Applicant shall be released on bail in C.R. No. 321 of 2018 for the offence punishable under Sections 363, 366(A), 376, 323, 504, 506 r/w. 34 of I.P.C. and Sections 3, 4 of POCSO Act, registered with Dattawadi Police Station, Pune, 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 Dattawadi Police Station, Pune, quarterly on the first day of each such month pending trial.

(iii) Applicant shall not make any attempt to tamper the witnesses.

(iv) Application is disposed of as allowed in above terms.

(P.N. DESHMUKH, J.)