

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

CRIMINAL BAIL APPLICATION NO. 644 OF 2019

Azhiruddin Alias Sonu Halwai
Niazamuddin Shaikh

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

Mr.Sunny Waskar for Applicant.

Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 22nd April 2019.

P.C. :

1] This is an application under Section 439 of the Code of Criminal Procedure for bail in connection with C.R. No. 181 of 2018 dated 15/03/2018 registered with Sakinaka Police Station, Mumbai, for the offence punishable under Section 376 of the Indian Penal Code and Section 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

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

3] The prosecutrix in the present crime was aged about 12 years of age on the date of lodgment of the crime and with a view to protect her identity and in consonance with the provisions of Section 228(A) of the Indian Penal Code and Section 33(7) of the POCSO Act, the detailed narration of the facts mentioned in the first information report and in the statement of the prosecutrix are hereby avoided.

4] It is the case of the prosecution that, the applicant committed forcible sexual assault on the prosecutrix on various occasions at her home. That the applicant had promised the prosecutrix of marriage and subsequently resiled from it.

5] The prosecutrix in her statement given to the lady police officer has stated that, she was having love affair with the applicant. That the applicant had prepared duplicate keys of her house and when the members in her house were fast asleep, the applicant used to open the door by the said duplicate keys, come inside the house and had committed an offence as contemplated under Section 376 of the Indian Penal Code on 7 to 8 occasions.

It is to be noted here that, the prosecutrix has stated that, in the said room she along with her brother and sister used to sleep. It

appears from the record that, the house of the prosecutrix consists of one room and kitchen admeasuring 8 x 6 x 10 ft.. In view thereof, it is difficult to accept that, the applicant would have been to the said place for commission of the said crime in the night when other family members were present.

6] In her statement to the Medical Officer, the prosecutrix has stated that, as a matter of fact, the applicant was intending to perform marriage with her and the necessary arrangements were made to perform the marriage in a Masjid. However, the brother of the applicant did not approve it and thereafter, the present crime is registered.

7] The medical evidence *prima-facie* indicates that, there was no force and/or violence committed by the applicant in the said crime. The Medical Officer has opined that, sexual violence cannot be ruled out. The evidence on record is silent about the fact that, the prosecutrix was really 12 years of the age on the date of lodgment of the crime. It is to be noted here that, the applicant was aged about 19 years on the date of the lodgment of the crime. The applicant is in jail since 15th March 2018 and the police have already completed investigation.

8] In view of the peculiar facts and circumstance of the present case, this Court is of the opinion that, the applicant can be released on bail.

Hence, the following order :-

- (i) The Applicant be released on bail in C.R. No. 181 of 2018 dated 15/03/2018 registered with Sakinaka Police Station, Mumbai, on his furnishing P.R. bond of Rs.15,000/- with one or two 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 influence prosecution witnesses.
- (v) Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]