

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

BAIL APPLICATION NO.804 OF 2019

Jahangir Angur Shaikh

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Vaibhav R. Gaikwad, Advocate for Applicant.
- Mr. Prashant Jadhav, APP for the State/Respondent.
- Mr. Shridhar P. Bhosale, PSI, Chandan Nagar Police Station, Pune present.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.242/2018 registered at Chandan Nagar Police Station, Pune City under Sections 363, 376, 366-A, 368 and 342 of IPC, under Sections 4, 8 and 5(L) and 6 of the Protection of Children from Sexual Offences (POCSO) Act and under Sections 9 and 11 of the Prohibition of Children Marriage Act.

2. The applicant is arrested on 23/9/2018 and since then, he is in custody. The FIR was lodged on 8/9/2018. Initially, the statement was recorded by the Railway Police and thereafter, the case was transferred to Chandan Nagar Police Station. The statement of prosecutrix which was recorded on 8/9/2018 mentions that she was 17 years of age. She was resident of West Bengal. She was married to her husband and was residing with him at Dodapur, West Bengal. The prosecutrix's grandmother was working in Pune City in the area known as Nanded City. She wanted to meet her grandmother. She came to Howrah Railway Station about 10-12 days prior to lodging of the FIR. That time one lady and one man came near her and started talking with her. They assured her that they would safely take her to Pune. In her FIR, she has mentioned that the lady was 45 years of age and the man was around 50 years of age. They came to Pune. Both these persons offered to take her to Nanded City in a four wheeler. They brought a car. She was taken in that car but was not taken to Nanded City. Instead she was taken to some unknown place. She was kept there in confinement. The man committed rape on her.

She was kept there for about 15-16 days. It is her case that both of them had planned to sell her for money and she was to be taken to Mumbai. She was taken to Pune Railway Station. On some pretext, prosecutrix rescued herself from their clutches and hid herself in a railway bogie. After some time, she sought help from a railway worker and approached police. Thereafter, she lodged her FIR. Subsequently, statement of the prosecutrix was recorded on 21/9/2018 wherein she had given more details about the incident. In that statement, she had clearly stated that she was taken to place at Chandan Nagar near Dwarka Garden. It was a shop for selling chicken. The name of the person who committed rape on her was Jahangir. The prosecution case is that it was none other than the present applicant who had committed rape on the prosecutrix. The prosecutrix was kept in confinement in that shop. Whenever applicant wanted to go out, he used to close the shop and the prosecutrix was kept inside. After a couple of days, the applicant took her to another place. Other co-accused Nayan kept her in confinement at that place and committed rape on her. Thereafter, she escaped as mentioned in the FIR. The

investigation is over and the chargesheet is filed.

3. Heard Mr. Vaibhav Gaikwad, Ld. Counsel for the Applicant and Mr. Prashant Jadhav, Ld. APP for the State.

4. Mr. Gaikwad submitted that the prosecutrix has changed her version in the FIR. She has stated that the culprit was about 50 to 52 years of age whereas the present applicant is much younger and is 26 years of age. He submitted that in the FIR she gave the details about places of confinement where she was kept. She further submitted that the ossification test of the prosecutrix reveals that she was more than 18 years of age. The circumstances show that she was willingly residing with the applicant and therefore, no offence is made out in view of the consensual relationship which is reflected from the circumstances.

5. As against this submission, Ld. APP pointed out that prosecutrix's Aadhar Card and passing certificate which are part of the chargesheet show that the victim was less than 18 years of age.

The chargesheet also contains statement of one Sabir Ali which is recorded on 25/9/2018. The statement shows that the applicant was seen with the victim in his house. This witness was having his shop next to the applicant's shop. The applicant claimed that the victim was his wife. After few days, he took away the victim with him. The photograph of the victim was shown to this witness and he had identified the photograph as that of the victim. Similar statement is given by Samina Sayyed.

6. I have considered all these submission. I have perused the chargesheet. The story mentioned in the FIR does indicate that the prosecutrix was about 17 years of age. Therefore, her consent is immaterial. In any case, the allegations against the applicant are serious. He had kept the prosecutrix in confinement and repeatedly committed rape on her. At this stage, there is no reason to doubt the veracity of the version given by the prosecutrix. The prosecutrix was a minor girl who had come to Pune in search of her grandmother. The applicant and co-accused had taken advantage of her situation and committed this serious

offence. There is sufficient material on record against the present applicant. Therefore, the applicant is not entitled to be released on bail. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)