

Anand

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

BAIL APPLICATION NO. 948 OF 2019

Javed Ahmed Shabbir Khan .Applicant

Vs.

The State of Maharashtra .Respondent

Ms Munira Palanpurwala, Advocate, for the Applicant
Mr. V. V. Gangurde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.07.2019

P.C.

. Heard learned counsel for the Applicant.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 266 of 2018 registered with the V. B. Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 376(2),(F),(I),(J),(N), 354-D, 506 of the Indian Penal Code and under Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the Applicant states that the Applicant has been falsely implicated in the said case, as the Applicant was

demanding the money advanced by him to the Complainant. Learned counsel relies on the document which is on page No. 55 of the Application, to show that as soon as the Applicant was arrested and taken to the Doctor for his examination, he had disclosed to the Doctor that he had lent Rs. 84,000/- to the victim's father and despite demand, the money was not returned and instead the complaint was lodged. Learned counsel for the Applicant has also filed an Affidavit of the Applicant, wherein the Applicant has undertaken not to enter the vicinity / area where the prosecutrix is residing alongwith the family members; and that he will not contact the prosecutrix or her family members.

4. Learned APP opposes the Application.

5. Perused the papers. The Applicant is a close relative of the prosecutrix, aged 15 years. It appears that the prosecutrix's mother was admitted in the hospital in September, 2018 and was on dialysis. As there was nobody to look after the prosecutrix, the prosecutrix was required to leave school and stay at home. According to the prosecution, on 30.06.2018, the maternal aunt of the prosecutrix (Complainant) had been to the hospital to see the prosecutrix's mother and the prosecutrix

was alone in the house alongwith her younger sister. It is alleged that the Applicant who is the husband of the prosecutrix's mother's sister, removed her clothes and inserted his finger in her private part and threatened her not to disclose the incident to anyone. It is alleged that the Applicant did the said act repeatedly again, when the prosecutrix was alone at home. The said incident was disclosed by the prosecutrix to her mother on 12.09.2018 pursuant to which the aforesaid complaint was lodged. It appears that when the Applicant was arrested, the history given by the Applicant was that his niece (his wife's elder sister's daughter) was knowing him, since childhood. The Applicant disclosed that he had lent the prosecutrix's father Rs. 84,000/- eleven months prior and that despite asking the said money back, the said amount was not returned and instead the complaint was lodged against him. The Applicant denied the allegation of touching the victim girl inappropriately or inserting his finger in her private part. It is not in dispute that no medical of the prosecutrix was done, as the prosecutrix refused the same. Whether or not the Applicant has been falsely implicated in the said case or because of some financial transaction between the Complainant and the prosecutrix's father, is a matter which will be decided by the trial Court. The Applicant is in custody since 30.09.2018. Investigation is complete and charge-sheet is filed.

6. Having regard to what is stated and the peculiar facts of the case as well as the Affidavit tendered by the Applicant, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

(i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 20,000/-** with one or two local sureties in the like amount;

(ii) The Applicant shall report to the investigating officer of the concerned police station on the **first Saturday of every month** between **10.00 a. m. and 11.00 a. m.** till the conclusion of the trial;

(iii) The Applicant shall not enter the jurisdiction of the V. B. Nagar Police, except for the purpose of attendance, as directed by this Court;

(iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, victim, witnesses or any person concerned with the case;

(v) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the

Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The Applicant to co-operate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vii) The Applicant to file an undertaking with regard to Clauses (ii) to (vi), in the trial Court, within two weeks of his release;

(viii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)