

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1260 OF 2019**

Mohammad Hussain Mohammad Gaus Kazi	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. K. M. Tripathi for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent-State

PI Mr. Pradeep Krishna Chawan, Parksite Police Station (Now attached to Matunga Police Station), is present

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 1st OCTOBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 344 of 2018 registered with the Parksite Police Station, Vikhroli, Mumbai, for the alleged offences punishable under Sections 376, 324, 506 of the Indian Penal Code.

3 Perused the papers, in particular, the statement of the prosecutrix, aged 19 years. According to the prosecutrix, her mother and the applicant were living together. In the complaint/FIR dated 25th July

2018, she has stated that in February 2018, she was roaming around on C.S.T Railway Station, when the police apprehended her and sent her to Children's Home at Dongri. She has stated that after three months, during Ramazan i.e. on 26th May 2018, her mother and the applicant came to Dongri and got her released and took her home. She has stated that she lived with the applicant, her mother and the applicant's two sons. According to the prosecutrix, after a few days, she had a quarrel with her mother, pursuant to which, she left home and went to Mahim Dargah and started begging. The prosecutrix has further stated that on 1st July 2018, when she was at Mahim Dargah, the applicant and his sons came and told her not to beg and to come home, pursuant to which, she went home. She has further stated that as the applicant stated something objectionable, she again left her house and went to Mahim Dargah. She has stated that again on 5th July 2018, the applicant came to Mahim Dargah and took her home. According to the prosecutrix, the incident took place in the intervening night between 22nd ad 23rd July 2018. She has stated that on the date of incident, the applicant, his mother and applicant's two sons were at home and that after dinner, they all slept in the hall. She has stated that at about 11:00 p.m, when she was sleeping in the hall, the applicant came there, picked her up and took her to the kitchen and started misbehaving with her. The applicant has also alleged to have banged the prosecutrix's head on the

wall and assaulted her with an iron pipe. The prosecutrix has alleged that the applicant had physical relations with her and threatened not to disclose the same to any person. The prosecutrix has stated that on 23rd July 2018 at 4:00 a.m, pursuant to the same, she again left the house and went to Bhabha Hospital at Bandra for treatment.

4 Learned counsel for the applicant states that the said statement of the prosecutrix is inconsistent and contradictory to her statements made to the doctor, her 164 statement and the medical injuries.

5 A perusal of the prosecutrix's report of the clinical and forensic psychologist, which is at page 32 of the application, shows that in the said statement, the prosecutrix has stated that only the applicant and his mother were at home when the incident took place and that the other family members including her mother, applicant's sons, his brother, brother's wife and their children had gone to the village to attend a marriage. *Prima facie*, there is variance in the manner in which the incident took place. Similarly, in the history given to the doctor, she has stated that about 14 persons including the applicant and his two sons sexually assaulted her on that night. In her 164 statement, again there is discrepancy. The fact that prosecutrix was assaulted on the head, is also not borne out by the medical

case papers. Column 18 of the medical case papers shows that when her genital parts were examined, they were found to be normal.

6 Learned A.P.P states that the prosecutrix has got married and is residing with her husband in Jogeshwari.

7 Having regard to what is stated aforesaid and the fact that the applicant is in custody since 27th July 2018 and that investigation is complete and charge-sheet is filed, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 1:00 p.m. till the conclusion of the trial;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the prosecutrix, witnesses or any person concerned with the case;

(iv) The applicant shall not enter the jurisdiction of Jogeshwari Police Station, where the prosecutrix is residing with her husband;

(v) The applicant shall inform his latest place of residence and mobile contact number 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 cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vii) The applicant shall 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.

8 The application is accordingly disposed of.

9 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.

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

REVATI MOHITE DERE, J.