

Anand

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

BAIL APPLICATION NO. 1121 OF 2018

Ashwin Gajanan Tarpe

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. Swapnil V. Newaskar, Advocate, for the Applicant

Mr. S. V. Gavand, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.07.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 180 of 2017 registered with the Kasarvadavali Police Station, Thane, for the alleged offences punishable under Sections 376(2)(I), 506(2) of the Indian Penal Code and under Sections 3 & 4 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the Applicant submitted that the Birth Certificate of the prosecutrix which is on page No. 32 of the Application cannot be relied upon, inasmuch as, this is the second Certificate. In

support of the said submission, learned counsel for the Applicant relied on two Judgments of the Apex Court in the case of *Sunil v. State of Haryana*, reported in *AIR 2010 SUPREME COURT 392* and *Ravinder Singh Gorkhi v. State of U. P.*, reported in *AIR 2006 SUPREME COURT 2157*. He further submitted that it is a case of consent between the Applicant and the prosecutrix and that the Applicant is falsely implicated in the said case. He further submitted that the prosecutrix has got married and that the Applicant is ready to take care of the child born from the said relations.

4. Learned APP opposes the Application. He submits that the School Certificate is issued by the first School and not the second School as alleged where the prosecutrix was studying, and that the same is in accordance with the School Register. Learned APP has tendered the 164 statement of the prosecutrix which is taken on record.

5. Perused the papers. According to the prosecutrix, aged 17 years, in 2013, the Applicant who was her neighbour took advantage of her when she was alone at home and had physical relations with her, without her consent by showing a knife. The Applicant is also alleged to have threatened the prosecutrix not to disclose the incident to any

person. She has further alleged that the Applicant told her that if she discloses the incident to any person, she would get defamed. She has stated that thereafter, the Applicant without her consent again had physical relations with her. She has further stated that in January, 2017, she shifted to another place and that the Applicant came there and again threatened her and had physical relations with her as a result of which she became pregnant, pursuant to which, the aforesaid complaint was lodged. According to the prosecution, the Applicant had physical relations with the Complainant without her consent from 2013 to 2017. The statement of the Complainant recorded under Section 161 of the prosecutrix is consistent with her 164 statement. In her 164 statement, she has also stated that the Applicant had photographs of her on his mobile when she was bathing and of the physical relations with him. When the complaint was lodged, the prosecutrix was 17 years. The alleged incident is stated to have started from 2013, when the prosecutrix was about 13 years of age. As far as the Certificate regarding the date of birth which is on page No. 32 of the Application is concerned, it appears that it was issued by the first School in accordance with the School Register.

6. Considering the prima facie material against the Applicant,

this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected. The Applicant is in custody since 2017, hence, the trial of the Applicant is expedited. Learned Trial Judge to conclude the case as expeditiously as possible and in any event within six months from the date of receipt of this order.

7. 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.

(REVATI MOHITE DERE, J.)