

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1332 OF 2019**

Mohd. Maaz Mohd. Tanveer Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Rajiv Patil, Sr. Counsel I/b Mr. Vishal Laxman Kolekar for the Applicant

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

Mr. Praveen Roy for the Complainant

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 26th JUNE 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. 23 of 2019 registered with the Naya Nagar Police Station, Thane, for the alleged offences punishable under Sections 354, 376(n), 417, 313, 471, 506 of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act ('POCSO').

3 Learned counsel for the applicant submits that the applicant and the complainant were in a relationship, which was consensual. He submits that the complainant is not a minor as alleged by her. He further submits that there is discrepancy in the statement given by the complainant as recorded by the police in the FIR and what is stated in her 164 statement. He submits that the complainant, in her complaint/FIR, has not disclosed about act being videographed by the applicant, whereas, in her 164 statement, for the first time, she has made this allegation. Learned counsel for the applicant further submits that the applicant is aged 20 years, studying Engineering. He submits that the applicant is in custody since January 2019 and that investigation is complete and charge-sheet is filed.

4 Learned A.P.P opposes the bail application. Learned counsel for the complainant also opposes the application. Learned counsel for the complainant submits that the complainant was a minor at the time when the alleged incident took place and therefore the police have rightly applied the provisions of POCSO. He further submits that the applicant may tamper with the evidence, if enlarged on bail. He further states that some of the

applicant's belongings are lying with the complainant and that the police have done panchanama of the locked bag containing articles. He states that the complainant has no objection, if the said articles are handed over by the police to the applicant. Learned counsel for the complainant makes a statement that the complainant will return the bag containing the articles of the applicant, which are in her possession to the Investigating Officer during the course of the day. The police to open the lock and draw a panchanama of the articles, in the presence of the parties i.e. applicant and complainant. If the passport is in the said bag, the police shall retain the said passport and if the articles are not required, the same be returned to the applicant, as the complainant has no objection to the return of the articles.

5 Perused the papers. According to the complainant, she met the applicant through Instagram and that they became friends and their friendship developed into a love affair. According to the complainant, aged 19 years, she met the applicant in 2017. She has alleged that the applicant had knowledge that she was a minor and hence, he made some changes in her Aadhar Card, to increase her age. She has stated that under a false promise of marriage, the applicant committed forcible sexual intercourse

with her against her will. In her FIR lodged on 21st January 2019, the complainant has not made any allegations that the applicant had filmed the act, but has only alleged that under false promise of marriage the applicant had forcible physical relations with her. The complainant in her 164 statement, which was recorded on 6th February 2019 has stated that the applicant had filmed the act and would have physical relations with her, threatening her on the basis of the said film. It also appears that the complainant has alleged that the applicant's brother had inappropriately touched her. It is not in dispute that the applicant's brother was granted pre-arrest bail by the Sessions Court, Thane on 16th March 2019. Whether the relations between the parties were consensual or not, whether the complainant is a minor or major, will be considered by the trial Court.

6 Learned senior counsel for the applicant tendered an affidavit-cum-undertaking of the applicant. The same is taken on record and marked 'X' for identification. In the said affidavit-cum-undertaking, the applicant has undertaken not to tamper with the witnesses as well as not to threaten the complainant directly or indirectly. The applicant is in custody since January 2019. Investigation is complete and charge-sheet is filed.

7 Accordingly, the application is allowed on the following terms and conditions :

ORDER

(i) The applicant be released on cash bail in the sum of Rs. 25,000/-, for a period of six weeks;

(ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(iii) The applicant shall not reside in the jurisdiction of Naya Nagar Police Station, Thane, except for the purpose of attending the police station;

(iv) The applicant shall attend the concerned Police Station on the first Monday of every month between 10:00 a.m. to 11:00 a.m. for a period of 12 months from the date of his release, except if the date in the trial Court falls on a Monday;

(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 cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

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

(viii) The applicant shall deposit his passport, if any, to the Investigating Officer before his release;

(ix) If the applicant intends to travel abroad, it is open for the applicant to file an appropriate application before the trial Court and seek permission of the trial Court, before travelling.

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.