

Anand

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

BAIL APPLICATION NO. 1619 OF 2019

Hanif Mohd. Ali Abbas Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Anil Lalla i/b. Lalla & Lalla Associates, Advocate, for the Applicant
Mr. S. V. Gavand, APP, for the Respondent – State
Mr. Sanjay Satpute, API, Dharavi Police Station, Mumbai present

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. 526 of 2018 registered with the Dharavi Police Station, Mumbai, for the alleged offence punishable under Section 376 of the Indian Penal Code and under Sections 4, 6, 10 & 12 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case due to a property dispute between the Applicant and the prosecutrix's father, who are

brothers. He further submits that it is highly improbable that the incident could have taken place in the presence of the family members, who were residing / sleeping in the same room. He further submits that the prosecutrix's cousin has not corroborated her statement with regard to the alleged act committed by the Applicant. He further submits that even the Medical Report do not corroborate the alleged act of rape by the Applicant.

4. Learned APP opposes the Application.

5. Perused the papers. According to the Complainant (mother of the prosecutrix), the incident took place on 21.11.2018. She has alleged that the Applicant touched her daughter, aged 13 years inappropriately when she was sleeping and had physical relations with her. The prosecutrix in her statement has stated that the Applicant hugged her from behind and had physical relations with her from behind and that the same was witnessed by her cousin. The statement of the prosecutrix's cousin is silent on this aspect. As far as the Medical injuries are concerned, although the prosecutrix has alleged 376 as against the Applicant. The Medical Report shows that her hymen was intact and there was no injury of tear. Whether or not the Applicant has

been falsely implicated, is a matter which will be decided by the trial Court.

6. Considering the peculiar facts of this case, 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. 25,000/-** 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 Dharavi Police Station, except for the purpose of attending the Police Station;

(iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, 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 cooperate with the conduct of the trial;

(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.)