

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

BAIL APPLICATION NO.1785 OF 2019

Mr. Aamir Ismail Khan ...Applicant
Vs
The State of Maharashtra ... Respondents

...
Mr. Madan Gupta i/by Mr. Ashok H. Shukla for the Applicant.
Ms. Rutuja Aambekar, APP for the Respondent-State.
PSI Vishal B. Sawant attached to Meghwadi Police Station present.

CORAM : SANDEEP K. SHINDE J.
DATE : 18th NOVEMBER, 2019

P.C. :

Heard learned counsel for the applicant and the learned APP for the State.

2 Applicant is seeking his enlargement on bail in Crime No.33 of 2018 (Sessions Case No.32 of 2015) for the offences punishable under Sections 376, 354, 392, 394, 436, 506-II, 34 and 114 of the Indian Penal Code, 1860 ('**IPC**' for short).

3 Victim and her husband were residing in the premises on the first floor of the public toilet at Jogeshwari. Both were doing the work of cleaning toilet. It is alleged that one Ismail was engaged in the business of grazing domestic goats. His son Aamir (Applicant) and one Pandya were seeking to keep the goats in the premises of public toilet. On this count, there were disputes between the husband of the victim on one hand and applicant, his father on the other hand. It is alleged that on 30th January, 2018 at about 4 a.m. when the victim's husband had gone out, accused barged in the house of the victim and assaulted her. In the course of the assault, they snatched her silver chain. It is further alleged that Ismail (father of the applicant) committed sexual assault in terms of Section 375(b) of the IPC.

4 The learned counsel for the applicant submits except, the complainant and her husband, there are no independent eye witnesses to the incident. He submits that

story of the prosecution is not probable. He submits that place of the incident is in thick locality; however, prosecution has not recorded statement of a independent witness. He submits that since there was previous enmity, between the husband of the victim and his father, a false case has been registered against the applicant. It is submitted that charge-sheet in this case has been filed against him and the case is committed to the Court of Sessions. It is argued that applicant's presence for trial can be secured by imposing stringent conditions. He seeks bail on these grounds.

5 The learned APP on instructions opposes the application, on the ground that, father of the applicant against whom there are allegations of sexual assault, is absconding since the date of offence. It is submitted that if this accused is released on bail, he may not be available for trial.

6 Applicant has no criminal antecedents. He is auto-rickshaw driver. He is in jail since 30th January, 2018.

Charge-sheet has been filed against him. Role attributed to the applicant is not of sexual assault.

7 Thus, taking into consideration facts of the case, role attributed to the present applicant and that trial is not likely to commence in near future and particularly, in absence of statement of independent witness, applicant is directed to be released on bail on the following terms and conditions:

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station and report to the Investigating Officer on every Monday of a week commencing from 25th November, 2019 between 10:00 a.m. to 11:00 a.m, till until his father is apprehended;

(iii) The applicant shall inform his latest place of residence, native address 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;

(iv) The applicant to cooperate with the conduct of the trial

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and attend all the dates before the trial Court, unless exempted;

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

(vi) 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 allowed in the aforesaid terms.

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.

(SANDEEP K. SHINDE, J.)