

Anand

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

BAIL APPLICATION NO. 1882 OF 2019

Asadali Roshanali Shah

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. Bhavesh M. Thakur, Advocate, for the Applicant

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

CORAM : REVATI MOHITE DERE, J.

DATE : 08.08.2019

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. 359 of 2017 registered with the Mumbra Police Station, Mumbai, for the alleged offence punishable under Section 363 & 376 of the Indian Penal Code and under Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act.

3. Perused the papers. According to the Complainant (mother of prosecutrix, aged 12-13 years) , her daughter i. e. the prosecutrix and her grand daughter (Applicant's daughter) went missing on

10.09.2017, pursuant to which she lodged a missing complaint with the Mumbra Police Station. On 19.09.2017, the Applicant, the prosecutrix and the Applicant's daughter, aged three years were found at the Mumbra Railway Station, pursuant to which the police brought them to the police station and informed the complainant. A perusal of the statement of the prosecutrix, aged 12-13 years shows that she had gone with the Applicant to Uttar Pradesh, alongwith the Applicant's daughter and thereafter, returned from Uttar Pradesh to Mumbai on 19.09.2018. She has stated that although the Applicant had no physical relations with her during the said period, the Applicant had prior thereto i. e. prior to leaving Mumbai had forcible physical relations with her. The Applicant is also alleged to have threatened her, not to disclose the said incident to any person. Learned counsel for the Applicant submitted that in the history given to the Doctor, she has stated that there was consensual intercourse between them. He further submits that the Applicant has been falsely implicated in the said case because of some family dispute. Having regard to the age of the prosecutrix i. e. 12-13 years, the question of consent does not arise. The Applicant, a married man had taken advantage of the prosecutrix, his sister-in-law. The possibility of the Applicant tampering with the witnesses / intimidating them also cannot be ruled out.

4. Having regard to the aforesaid, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected.

5. 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.)