

Anand

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

BAIL APPLICATION NO. 1909 OF 2019

Kailas Jayram Gupta

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. Ranjit Patil a/w Mr. Amey C. Sawant, Advocate, for the Applicant
Ms Veera Shinde, APP, for the Respondent – State
Ms Manisha Kashid, API, Rabale MIDC, Navi Mumbai present

CORAM : REVATI MOHITE DERE, J.

DATE : 03.09.2019

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. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 214 of 2018 registered with the Rabale MIDC Police Station, Navi Mumbai, for the alleged offences punishable under Sections 376, 376(2)(i), 376(2)(j), 376(2)(n), 328, 506 of the Indian Penal Code and under Sections 4 & 6 of the Protection of Children from Sexual Offences Act.

3. Perused the papers. According to the prosecution, the Applicant gave some drugs to the prosecutrix, aged 15 years to sniff and also put a cloth on her nose as a result of which the prosecutrix became

unconscious and thereafter, had physical relations with her. A perusal of the statement of the prosecutrix shows that the Applicant was residing in the same chawal as their neighbour. She has stated that the Applicant called her to his house in March, 2018 when her parents were not at home and thereafter, gave some drugs to sniff and even put a cloth on her nose as a result of which the prosecutrix became unconscious. She has further alleged that when she woke up, she found that she had no clothes on her person and that she was bleeding from her private part. She has further stated that the Applicant threatened her not to disclose the said incident to any person, pursuant to which she did not disclose the same to any person. She has further stated that again in April, 2018, when her parents had gone to the village, the Applicant again forcibly took her home and committed the same act i. e. made her unconscious and thereafter, had physical relations with her. The prosecutrix has further stated that when her mother returned home in June, 2018 from the village, she realized that the prosecutrix was pregnant and when she questioned her, the prosecutrix disclosed the Applicant's name. A perusal of the medical case papers of the prosecutrix shows that when she was examined in June, 2018, she was found to be 22 weeks pregnant. If the said 22 weeks is taken into consideration, the incident could have taken place in January, 2018. A DNA Report tendered by the learned APP today shows that the Applicant is not the biological father of the child. According to the learned counsel for the Applicant, the

Applicant has been falsely implicated in the said case. Be that as it may, whether or not the Applicant has committed the aforesaid act, is a matter which will be decided by the trial Court. The Applicant is in custody since April, 2018 and investigation is complete and charge-sheet is filed.

4. Considering the aforesaid, 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. 20,000/-** 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 every Saturday** between **10.00 a. m. and 12.00 noon** till the conclusion of the trial;

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

(iv) The Applicant shall not enter the jurisdiction of the Rabale MIDC Police Station, Navi Mumbai, except for the purpose of attending the police station;

(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 shall 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.

5. The Application is allowed in the aforesaid terms and is accordingly disposed of.

6. 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.)