

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

CRIMINAL BAIL APPLICATION NO. 2006 OF 2019

Mohammad Arif Istiyak Ali Shah	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms.Sayed Shabana M. Ali, for the Applicant.
Ms. P.P. Shinde, A.P.P for the Respondent - State.

***CORAM : REVATI MOHITE DERE, J.
DATE : 22nd August, 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 I-213 of 2018 registered with the Shantinagar Police Station, Bhiwandi, Thane, for the alleged offences punishable under Sections 376 (D)(N) of the Indian Penal Code and under Sections 4, 6 and 8 of Protection of Children from Sexual Offences Act.

3. Perused the papers, in particular, the statement of the

prosecutrix, aged 17 years. According to the prosecutrix, the applicant and co-accused-Bilal were staying in her neighbourhood. She has stated that about two months prior to the registration of the FIR, she had gone to purchase some articles from Bilal's shop. She has alleged that Bilal held her hand, took her to a room showed her a knife and under a threat, had physical relations with her. She has further stated that Bilal threatened her not to disclose the said incident to any person, else he would kill her. She has further stated that Bilal called her often and had physical relations with her. She has further stated that prior to Bakri-Id, the applicant also had forcible sexual intercourse with her and continued to have physical relations with her even thereafter. She has stated that later, she discovered that she was pregnant, pursuant to which, her father asked her, whose child she was bearing. According to the prosecutrix, she disclosed that the child was of applicant and Bilal. She has further stated that the applicant performed *Nikah* with her and left her, pursuant to which Bilal got married to her.

4. The DNA report shows that the child is neither of Bilal nor of the applicant. The applicant is in custody since July 2018. The applicant is suffering from cancer. The applicant has no antecedents. Learned counsel

for the applicant has also filed an affidavit-cum-undertaking of the applicant that he will not tamper with the prosecution evidence and witnesses and that he will co-operate in the conduct of the trial.

5. Having regard to what is stated hereinabove, and the affidavit-cum-undertaking filed by the applicant, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The applicant be released on cash bail in the sum of Rs.10,000/-, 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.10,000/- with one or two sureties in the like amount;
- iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- iv) The applicant to co-operate in the conduct of the trial and attend all

the dates before the trial Court, unless exempted;

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) An undertaking to the aforesaid clauses (iii) to (v), shall be filed by the applicant, in the Registry of the trial Court, within two weeks of his release;

vii) 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 conditions, the prosecution shall be at liberty to seek cancellation of applicant's bail.

7. The Application is allowed and disposed of in above terms.

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.

9. All concerned to act on the authenticated copy of this order.

(*REVATI MOHITE DERE, J.*)