

shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2045 OF 2019**

Mohamed Tanveer Rashid @	]	
Mohammed Hanif	]	Applicant
Versus		
The State of Maharashtra	]	Respondent

.....
Ms. Anjali Patil, for the Applicant.

Mr. P.H.Gaikwad-Patil- A.P.P for the Respondent - State.

P.S.I- Javed Karadkar, Oshiwara Police Station.
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CORAM : REVATI MOHITE DERE, J.

DATE : 4th OCTOBER, 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.158 of 2019 registered with the Oshiwara Police Station, Mumbai, for the alleged offences punishable under sections 376, 323, 506 of the Indian Penal Code r/w sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012.

3. Perused the papers and in particular the statement of the prosecutrix recorded under sections 161 and 164 of the Criminal Procedure Code. According to the prosecutrix, she was staying at Calcutta with the applicant and his family. She has stated that the applicant is her cousin. According to the prosecutrix, the applicant sexually abused her in October, 2018 and again twice thereafter. The prosecutrix has stated that she was also being ill treated by the applicant's mother, i.e her aunt and hence, she left the house and went to her uncle's house who was also residing in Calcutta. She has stated that her youngest aunt came to fetch her from the Uncle's house, pursuant to which, she went to her younger aunt's house, who later called her mother some time in April, 2019, to take her back. She has further stated that she did not disclose the incident of sexual assault to her mother nor to any of the family members. She has stated that when she came to Mumbai with her mother and the applicant, on one occasion, the applicant got angry with her and her mother, and assaulted them.

4. Learned Counsel for the applicant states that the applicant would frequently leave her house and run away and the same is evident from the statements of some of the witnesses. She submitted that the applicant has been falsely implicated in the said case. Learned Counsel for

the applicant relied on the statement of the prosecutrix's younger aunt in support of the submission that the prosecutrix would create trouble between the families and was in a habit of running away from home. The said witness had stated that the prosecutrix had never disclosed about any incident of sexual assault on her by the applicant.

5. Learned A.P.P states that the prosecutrix is presently at Calcutta, residing with her mother. Learned Counsel for the applicant has tendered an affidavit of the applicant. The same is taken on record. In the said affidavit, the applicant has undertaken not to contact the prosecutrix and not to enter in the jurisdiction/area where the prosecutrix is residing. He has undertaken to attend the trial Court on every date. Whether or not, the applicant has been falsely implicated or not is a matter which will be decided by the trial Court.

6. The applicant is in custody since April, 2019. Investigation is complete and charge-sheet is filed. The Applicant has no antecedents.

7. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- each with one or two local sureties in the like amount;
- ii) The Applicant shall report the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant shall inform their 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 trial Court as well as to the concerned Police Station, in writing;
- iv) The Applicant shall not tamper with the evidence or attempt to influence/contact the prosecutrix, witnesses or any person concerned with the case;
- v) The applicant shall not leave Mumbai or Thane City without permission of the trial Court;

vi) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of their release;

viii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above 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.

[REVATI MOHITE DERE, J.]