

Shailaja

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

CRIMINAL BAIL APPLICATION NO.2122 OF 2019

Rahul Ramesh Gechand	]	Applicant
Versus		
The State of Maharashtra	]	Respondent

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Mr. Anand Mishra, for the Applicant.

Ms. P.P.Shinde, A.P.P for the Respondent - State.

Mr. Sachin Suryawanshi, A.P.I, Kherwadi Police Station.

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CORAM : REVATI MOHITE DERE, J.

DATE : 30th SEPTEMBER, 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.808 of 2016 registered with the Dindoshi Police Station, Mumbai for the alleged offences punishable under Sections 363, 367, 376 (D), 34 of the Indian Penal Code and under Sections 3 and 4 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the said case. Learned Counsel for the applicant relied on the order dated 13th December, 2018 and 9th January, 2019 passed by this Court (Coram: Prakash D. Naik, J.), enlarging co-accused Naveen S/o. Kirsan Sarsar and Sunny Bramha Bagadi on bail. He submits that the D.N.A report does not support the case of the prosecution. He further submits that about 4 cases were registered at the behest of the complainant with the same Police Station, alleging that the victim was sexually assaulted.

4. Learned A.P.P opposed the application. She submitted that the applicant is named by the complainant in her F.I.R and that the applicant's name consistently appears in the F.I.R, thus showing his complicity. She submits that the victim was 16 years old at the relevant time and that she was suffering from a psychiatric disorder and that the applicant has taken advantage of the same.

5. Perused the papers. According to the prosecution, the complainant's daughter, aged 16 years left home on 21st October, 2016 and did not return thereafter. The complainant searched for her daughter in the vicinity and as she was not found, lodged a complaint of kidnapping on

23rd October, 2016. The prosecutrix who is 16 years old was found at Marve Beach, Malvani and was brought home, pursuant to which the complainant's statement was again recorded on 28th October, 2016. According to the complainant, she made inquiries with her daughter (prosecutrix) about her whereabouts during the said period. The prosecutrix allegedly disclosed to the complainant that she was acquainted with the applicant, a Rickshaw Driver, who was residing in the same area and was friendly with her. The prosecutrix further disclosed that few months prior, the applicant had taken her to a garden in his Auto Rickshaw, for eating Chinese bhel and had committed sexual intercourse with her. She further disclosed that the applicant had also taken her to his residence, where he and his friends had physical relations with her and threatened her not to disclose the same to any person. The prosecutrix also disclosed that on 21st October, 2016, she was taken by the applicant in his Auto Rickshaw to Marve Beach, where the applicant and his friends had physical relations with her from 21st October, 2016 to 25th October, 2016. The prosecutrix in her statement dated 28th October, 2016 has reiterated the same. When the prosecutrix was medically examined in November, 2016, it was revealed that she was 11 weeks pregnant and that she was suffering from a psychiatric disorder. It appears that certain people had taken advantage of the psychological condition of the prosecutrix and had sexually assaulted

her. No doubt, the D.N.A does not match that of the applicant, however, the fact remains that the prosecutrix has named the applicant. It appears that apart from the applicant several others had sexually exploited the prosecutrix and hence the question of non matching of D.N.A does not assume much importance in the facts. The applicant has taken advantage of the psychological condition of the prosecutrix. In the history given to the Doctor, the prosecutrix has revealed the name of the applicant. The other co-accused were enlarged on bail, as their names were not disclosed . What was stated by the prosecutrix in her statement to the Doctor was Rahul (applicant) and his friends. In the facts, the possibility of the applicant tampering with the evidence also cannot be ruled out.

6. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail. Accordingly, the application is rejected. However, the trial of the applicant is expedited. The learned trial Judge shall decide the said case as expeditiously as possible and in any event, within 9 months from the date of receipt of this order, having regard to the prosecutrix's psychological condition.

7. 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.

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

[REVATI MOHITE DERE, J.]