

Anand

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

BAIL APPLICATION NO. 2322 OF 2019

Niaz Shaikh s/o. Azam Shaikh @ Niyazam .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Nadim Pathan i/b. Ms Anjali Patil, Advocate, for the Applicant
Mrs. P. P. Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 17.10.2019

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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. 294 of 2018 registered with the Shivaji Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 376(2), 354(A),(D), 363, 341, 337, 323, 504, 506(2) r/w 34 of the Indian Penal Code and under Sections 4, 6, 8, 12, 16 & 17 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the Applicant submits that the allegations as against the Applicant are false and baseless. He submits that the allegation made by the prosecutrix of alleged rape is not supported by the medical case papers. He submits that at the highest, the

offence could be one punishable under Section 354 of the Indian Penal Code.

4. Learned APP opposes the Application. Learned APP, however, does not dispute that the medical evidence does not support the allegations of rape made by the prosecutrix.

5. Perused the papers. According to the prosecutrix, aged 17 years and 8 months, the Applicant was residing in the neighbourhood alongwith his wife and as such, was known to her. She has alleged that in March, 2018, the Applicant came to her house when she was alone and disclosed to her that he liked her and proposed marriage to her. The prosecutrix allegedly refused the said proposal. According to the prosecutrix, the Applicant would follow her and propose marriage to her. It is alleged by the prosecutrix that in May, 2018, when she was at her residence and her father was sleeping, the Applicant came to her house and asked her to come to his house and when she refused, forcibly took her to his residence, closed the door and touched her inappropriately. She has stated that due to fear, she did not disclose the said incident to anybody. She has further alleged that on 15.06.2018 at about 8.00 a. m., when she was alone in the house, the Applicant called her to his house to eat and when she refused, forcibly took her, closed the door and touched her inappropriately and sexually assaulted her. The

prosecutrix has further alleged that again on 17.06.2018, the Applicant forcibly took her to his room and banged her head, pursuant to which, she sustained an injury. When the prosecutrix was taken to the Doctor, she disclosed the incident to her neighbour, who in turn disclosed the incident to her elder sister-in-law, pursuant to which, the complaint was lodged. As far as the allegations of rape are concerned, prima facie, the medical case papers do not support the same. In fact, in the history given to the Doctor, the prosecutrix has not alleged rape as against the Applicant but of forcibly taking her to his house and inappropriately touching her. Learned counsel for the Applicant has filed an Affidavit of the Applicant. The said Affidavit is taken on record. In the said Affidavit, the Applicant has undertaken not to contact / stalk the victim girl. He has also undertaken not to pressurize or tamper with the witnesses. The Applicant has also undertaken not to enter the jurisdiction of that area where the victim girl resides. The Applicant is in custody since 21.12.2018. Investigation is complete and charge-sheet is filed.

6. Considering the aforesaid, the Application is allowed on the following terms & conditions :-

ORDER

(i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 15,000/-** 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 the **first Saturday of every month** between **10:00 a. m. to 11:00 a. m.** for a period of 24 months from the date of his release;

(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 shall not enter the jurisdiction of the Shivaji Nagar Police Station, 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 co-operate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(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.

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

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.

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

(REVATI MOHITE DERE, J.)