

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2185 OF 2018**

Sabana @ Sabu Budhwanta @ Hanumantha Harijan	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Ujjwal Gandhi for the Applicant

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

API Ms. Shital Patil from D. N. Nagar Police Station, is present

CORAM : REVATI MOHITE DERE, J.
MONDAY, 1st JULY 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. 229 of 2017 registered with the D. N. Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 376 r/w 34 of the Indian Penal Code and under Sections 4, 5(n), 6, 19 and 21 of the Protection of Children from Sexual Offences Act.

3 Perused the papers, in particular, the statement of the prosecutrix aged around 16 years. According to the prosecutrix, she was staying with her maternal aunt, as her parents had expired, when the applicant committed forcible sexual intercourse with her on several occasions. She has stated that despite informing her aunt, her aunt-co-accused-Vanamma Potoor did not take cognizance of the same. The prosecutrix has alleged that thereafter she had pain in her abdomen, pursuant to which, she was taken to the doctor, pursuant to which, it was revealed that she was 1½ months pregnant. The history given by the prosecutrix to the doctor is consistent with her statement given to the police. The DNA report confirms that the applicant is the biological father of the foetus. Whether or not the applicant is a major as alleged by the applicant and whether the relations were consensual, is a matter, which will be decided at the trial by the trial Court.

4 *Prima facie*, it appears that the applicant had taken advantage of the prosecutrix and had forcible relations with her, without her consent. The DNA report also supports the fact that the applicant is the father of the

foetus. Even otherwise, the matter is posted for framing of charge. Accordingly, the application is rejected. However, the trial of the applicant is expedited.

5 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.

6 Application is disposed of accordingly.

REVATI MOHITE DERE, J.