

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

BAIL APPLICATION NO.2434 OF 2019

Aadil Jawed Shaikh

... Applicant

Vs

The State of Maharashtra

... Respondents

...
Ms. Falguni Brahmabhatt with Ms. Devashree Pandit for
the Applicant.

Mr. S.R.Agarkar, APP for the Respondent-State.

PSI Suresh Patil attached to Mira Road P.Stn. Present.

CORAM : SANDEEP K. SHINDE J.

DATE : 26th NOVEMBER, 2019

P.C. :

Applicant is seeking his enlargement on bail in Crime No.299 of 2018 registered with Mira Road Police Station for the alleged offences punishable under Sections 376(I), 376(DA), 328 read with Section 34 of the Indian Penal Code, 1860 ('**IPC**' for short) and under Sections 4 and 6 of the Protection of Children From Sexual Offences Act, 2012 ('**POCSO**' for short). Victim was undergoing drug-addiction treatment in the hospital. On 23rd November,

2018, her statement was recorded when consulting psychiatrist certified, victim was mentally fit to give statement. She alleged, on 15th October, 2017, one Ajit Pathak, Adil Kashmiri, Adil Shaikh and 3-4 friends of Ajit sexually assaulted her in the flat of Ajit Pathak. Victim further stated, after the incident, she was repeatedly sexually assaulted by Adil Shaikh and Ajit Pathak.

2 Submission is, Adil Shaikh is absconding and his complete name is Adil Nadil Shaikh. It is submitted that applicant's name is Aadil Jawed Shaikh and he is noway concerned with the alleged offence. Learned counsel for the applicant has relied upon statement of the witness, Samarin @ Najiya Shakil Shaikh recorded on 14th December, 2018. It shows, victim was friendly with Ajit Pathak for sometime and thereafter, she became friendly to one Adil Shaikh.

3 To ascertain presence of the present applicant, at the flat of Ajit Pathak on the date of the alleged incident, Investigating Officer was directed to verify Call Detail Records (CDR) of the applicant. The learned APP on

instructions submits that CDR for the period prior, 15th October, 2017 are not available.

4 I have perused the FIR, which came to be lodged a year after the incident. Neither the FIR nor the statement of the victim recorded on 23rd November, 2018 admits presence of Aadil Jawed Shaikh at Ajit Pathak's flat. In fact, statement of witness, Samarin @ Najiya Shakil Shaikh makes reference to boyfriend of the victim, Adil Shaikh, who is absconding.

5 Admittedly, prosecution has not conducted Test Identification Parade though it is alleged that Adil Shaikh, Adil Kashmiri , Ajit Pathak and 3 others sexually assaulted her. Prosecution has not taken pains to identify, who were these 3-4 persons. Prima-facie, there is nothing on record pointing out, complicity of the applicant in the alleged offence. Applicant is in custody, since 8th December, 2018. There are no criminal antecedents against this applicant.

6 Applicant is, therefore, directed to be released on bail on the following terms and conditions:

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(ii) The applicant shall report to the Investigating Officer of the concerned Police Station twice in a month on 1st and 15th day of succeeding month till the charges are framed;

(iii) 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;

(iv) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) 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 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.

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

(SANDEEP K. SHINDE, J.)