

Dusane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2675 OF 2019

Mohammed Atif Mohammed Rafiq Applicant
Khan

Vs.

The State of Maharashtra Respondent

Mr. Ganesh Iyer i/by Neetu R. Mishra, Advocate, for the Applicant
Ms. P.P. Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 24.09.2019

P.C.

1. At the outset, learned counsel for the applicant seeks leave to amend to delete the name of the prosecutrix wherever it appears in the application. Leave granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the Applicant and the learned APP for the Respondent – State.

3. By this Application, the Applicant, who is 19 years old seeks his enlargement on bail in connection with C.R.No. 311 of 2019 registered with Kurla Police Station, Mumbai, for the alleged offence punishable under Section 376 of the Indian Penal Code and Sections 4, 6, 8, 10 and 12 of Prevention of Children from Sexual Offences Act (“POCSO” Act).

4. Perused the papers. According to the complainant-mother of the prosecutrix, (who is aged 17 years and 6 months old), as her daughter (prosecutrix) started vomiting on 27th July 2019, she took her to the Bhabha Hospital. It appears that after conducting a few tests, including sonography, the Doctors disclosed to the complainant that her daughter was pregnant. The prosecutrix was taken into confidence, pursuant to which she disclosed that she had met the applicant through her college friend and that their friendship developed into a love affair, and that they had physical relations, from January 2019 to June 2019.

5. Learned counsel for the applicant states that the relations between the applicant and the prosecutrix were consensual. He further states that the applicant is a student and his examination is

scheduled on 7th October, 2019. The question of consent does not arise, having regard to the fact that the prosecutrix was a minor at the time of the alleged incident.

6. Be that as it may, having regard to the peculiar facts and circumstances of the case, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant be released on cash bail in the sum of Rs. 10,000/- for a period of six weeks.

(ii) The applicant shall within the said period of six weeks, furnish PR Bond in the sum of Rs. 10,000/- with one or two sureties in the like amount;

(iii) The applicant shall not contact the prosecutrix and shall not tamper with or attempt to influence or contact the complainant, witnesses or any person concerned with the said case;

(iv) 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 the concerned Police Station;

- (v) The applicant to cooperate with the conduct of the trial;
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.
9. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)