

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

CRIMINAL BAIL APPLICATION NO.2725 OF 2019

Rajaratan Namdeo Shinde	..Applicant
V/s.	
The State of Maharashtra	.. Respondent

Mr.Rahul Arote a/w Mr.Anil Jadhav for the Applicant.

Mrs.J.S. Lohokare, APP for the Respondent-State.

Ms.Nikita Tilwani for the Intervener.

Mr.Shrimant Jedhe, P.S. Kashimira Police Station is present.

CORAM : SANDEEP K. SHINDE, J.

DATE : 25th NOVEMBER 2019

P.C.

1. The applicant is seeking enlargement on bail in Crime No.704 of 2018 registered with Kashimira Police Station for the alleged offences punishable under Sections 363, 376(2)(n), 366A, 372 of the Indian Penal Code and Section 4,10 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. On 11th November 2018 victim's mother reported her 17 years daughter was missing. On her complaint, Crime No.704 of 2018 came to be registered under section 363 of the Indian Penal

Code.

3. On 12th November 2018 complainant was informed the, victim was brought to the Kashimira Police Station by one Pramila Sharma through NGO. The victim initially refused to live with her mother. She was produced before the CWC on 13th November 2018 and thereafter kept in Anmol Children Home. On 31st December 2018, victim volunteered to live with her parents. Custody was handed over to the mother. Mother in her statement said that the complaint was lodged due to misunderstanding.

4. On 11th January 2019 a statement of victim was recorded. It shows, since 2018 she was working in the establishments of different bars and restaurants and happened to meet the present applicant in May 2018. Victim reported, she volunteered to accompany the applicant at Goa, where they stayed together for 2 to 3 days. Statement therefore, does not suggest the victim was a sexually exploited by the applicant. It appears on the basis of the victim's statement, the applicant was apprehended on 14th January 2019. She said she is in love with applicant and had physical intimacy with two other persons. Evidence shows, while seeking employment in the hotels Adhar Card was produced by her.

It shows, her date of birth is 23rd May 1997. It is therefore, contended in 2018, the victim was not a 'child'. The submission is that she was in a consensual sexual relationship, with applicant.

5. The learned APP submits the victim was born on 23rd May 2001 and relied on another adhar card. In support of this contention a certificate is produced from a Municipal Council, Agra confirming the victim was born on 23rd May 2001.

6. This matter was heard by this Court extensively on 21st November 2019 and at the relevant time it was submitted by the counsel for the NGO that, the applicant is a married person and has promised victim to marry her.

7. Today affidavit is filed by the applicant's mother stating applicant is not a married person. This fact is verified by the learned APP.

8. In view of the facts, there is no definite evidence before the Court to hold, at the relevant time the applicant was a 'child'. *Prima-facie* it also appears the victim volunteered to accompany the applicant at various places and indulged into the sexual

relationship. The investigation is over. The applicant is a contractor with the Corporation. He is a permanent residence at Juinagar, Navi Mumbai and his presence can be secured by imposing conditions. In view of the facts of the case and for the reasons stated, application it is allowed.

ORDER

(i) The applicant be enlarged on bail in Crime No.704 of 2018 registered with Kashimira Police Station on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

(ii) The applicant is directed to furnish address of residence and mobile contact number to the Investigating Officer within 7 days from his release from the jail;

(iii) The applicant shall report to the Kashimira Police Station once in a month on first Monday of each month commencing from December 2019 between 10.00 to 1.00 p.m. till the charge is framed.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses

or any other person concerned with the case;

8. The application is accordingly disposed of.

9. 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.

10. Intervention application is allowed and disposed of

(SANDEEP K. SHINDE, J.)