

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

CRIMINAL BAIL APPLICATION NO. 2845 OF 2019

Rizwan Makdum Sayyad

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Balwant V. Salunkhe, Advocate for the Applicant.

Mr. Y.M. Nakhawa, A.P.P. for the Respondent-State.

P.S.I. J.S. Karadkar, Oshiwara Police Station present.

CORAM : SANDEEP K. SHINDE, J.

DATE : 05th NOVEMBER 2019.

P.C.

1 Heard learned counsel for the applicant and learned A.P.P. Mr. Y. M. Nakhawa for the Respondent – State.

2 Applicant seeks his release on bail in Crime No.454 of 2017 registered with the Oshiwara Police Station, Mumbai for the alleged offences punishable under Sections 363, 376 and 504 of the Indian Penal Code, 1860 (**‘IPC’** for short) and under Sections 4, 8 and 12 of the Protection of Child from Sexual Offences Act, 2012 (**‘POCSO’** for short).

3 Applicant was arrested on 01st December 2017.

4 On 13th November 2017 missing complaint was lodged by victim’s mother. At the relevant time, victim was studying in eighth

standard.

5 I have perused the statement of victim recorded on 16th November 2017 under Section 24 of the POCSO. Her statement, *prima facie*, indicates victim voluntarily accompanied Rizwan (applicant) to his house. The alleged incident of sexual assault is dated 16th November 2017. On 27th November 2017 victim was referred for Psychiatric evaluation. Mental health expert, recorded the statement of victim, which shows that she met the accused 20 days back and she went out along with other friends to Madh island; stayed there and had consensual sexual intercourse with him. Later, she felt whatever happened, was wrong and thereby the complaint was lodged.

6 Learned A.P.P. has pointed out the medical report which shows evidence of sexual intercourse / assault cannot be ruled out. Learned A.P.P. submits that in the November 2018, the applicant was minor.

7 Learned counsel has taken me through the statements of witnesses, spot panchnama and medical report to contend that the victim voluntarily accompanied accused at Madh, Malad (W). *Prima facie*, the submissions made by the counsel has substance.

8 Be that as it may, learned counsel for the applicant has placed

on record the information supplied to him under Right to Information Act. It is taken on record and marked as Exhibit '**X- 1**' for **Identification**. It discloses that three offences of similar nature are registered either at the instance of victim or her mother with the Oshiwara Police Station, bearing C.R. No. 123 of 2018, 233 of 2018 (both under Section 363 of the IPC) and one Sessions Case No. 409 of 2018 for the offences punishable under Sections 363 and 376 (2) read with Section 4, 8 and 12 of the POCSO, wherein victim is complainant.

9 Taking into consideration the statement of victim and the information placed on record, sought under Right to Information Act 2005, I am inclined to grant the application and accordingly direct release of the applicant on the following terms and condition :

ORDER

- (i) The applicant shall be released on the bail on executing P.R. Bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station once in the fortnight commencing from the 15th November 2019 for the period of one year;
- (iii) The applicant shall inform particulars of his residence and

mobile contact number 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) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults either in attending the Police Station, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

(viii) The applicant shall not enter within the jurisdiction of the Oshiwara Police Station.

10 The application is allowed in the aforesaid terms and is accordingly disposed of.

11 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.

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

(SANDEEP K. SHINDE, J.)