

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

BAIL APPLICATION NO. 3230 OF 2018

Chandar @ Mahammad Ali Shafi Hashmi	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Priyal G. Sarda for the Applicant.

Mr. Prashant Jadhav, A.P.P. for the Respondent – State.

CORAM : P.N. DESHMUKH, J.

DATED : 3rd APRIL, 2019.

P.C. :

1 Heard learned Counsel for applicant and learned A.P.P. Perused the copies of charge-sheet filed with the application. Learned Counsel for applicant has pressed for bail on two grounds firstly, that there is no involvement of applicant in the report dated 13.01.2017 nor in the additional statement of prosecutrix dated 16.01.2017, but he is involved in the history given by prosecutrix on 13.01.2017 wherein apart from applicant prosecutrix has also involved her step-father to have sexually assaulted her and has contended that in view of above, applicant's involvement is doubtful and prayed that application be allowed in this count.

2 Learned Counsel while pressing second ground had referred to the statement of prosecutrix recorded much later on 04.02.2017 and her

supplementary statement dated 14.03.2017 and has submitted that in these statements, applicant is involved by prosecutrix to have sexually assaulted her repeatedly however, submitted that both these documents are full of doubts as in the entire charge-sheet nothing is on record which prevented prosecutrix from disclosing name of applicant in the F.I.R. and has, therefore, submitted that since according to the report it is step-father of prosecutrix, who for a considerable period, had sexually exploited his step daughter. Medical evidence is positive and in fact according to it, minor girl is also stated to be pregnant.

3 In the set of above circumstances, it is submitted that since charge-sheet is filed and involvement of applicant in the crime is doubtful, he be released on bail on imposing suitable conditions.

4 Learned A.P.P. had relied upon prosecutrix statement recorded under Section 164 of Cr.P.C. and had submitted that even prior to recording of same, prosecutrix had involved applicant in the history given to medical officer on 13.01.2017 on which day she was referred for medical, however, could not assist the Court as to why applicant was not involved by prosecutrix in her report dated 13.01.2017 or in her additional statement.

5 In the light of above facts, learned A.P.P., however, submitted that since applicant's involvement is prima facie established, application is liable to be rejected on this count also, more particularly when prosecutrix is minor.

6 In the light of submissions advanced as aforesaid, there appears substance in the submissions advanced for applicant as prosecutrix who at the time of lodging of report, was aged about 12 years had not spelt out anything against the applicant either in her first or subsequent statement nor in the statement of her friend Ganga or Ganga's mother Mamta Choudhary or their relative Sony Gautam.

7 It is material to note that prosecutrix prefers to remain silent even in her additional statement recorded on 16.01.2017 but has implicated applicant to have sexually assaulted her in her statement recorded on 04.02.2017 under Section 164 of Cr.P.C. and her supplementary statement recorded thereafter after lapse of one month. Considering undue delay caused by prosecutrix to involve applicant in the present crime as aforesaid, there is sufficient reason to doubt in the case of prosecution of applicant's involvement by the minor girl for whatsoever reason but facts, as reveals from the charge-sheet, would certainly establish that there is no prima facie evidence against the applicant involving in this

crime which doubt is more substantiated as there is nothing which prevented prosecutrix from naming applicant in her report or in her supplementary statement. In the circumstances, following order is passed :

ORDER

- i) Applicant in C.R. No.23 of 2017 registered with Wakad Police Station, District Pune, for the offences punishable under Sections 376 (f)(i) (n), 354, 506 and 34 of I.P.C. and under Section 5 (l)(m)(n) r/w 6 of POSCO Act, shall be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount;
- ii) While on bail, Applicant shall not enter within the territorial jurisdiction of Pawana Nagar Lane No.1, Kalewadi, District Pune, where prosecutrix reside until further orders.
- iii) Applicant shall not make any attempt to tamper the prosecutrix who is minor.
- iv) Application stands disposed of as allowed.

(P.N. DESHMUKH, J.)