

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

CRIMINAL BAIL APPLICATION NO. 2439 OF 2019

Imran Ismail Mohammad Shaikh ... Applicant

Versus

The State of Maharashtra ... Respondent

...

Ms. Anjali Patil, Advocate for the Applicant.
Mrs. J.S. Lohakare, A.P.P. for the Respondent-State.

...

CORAM : SANDEEP. K. SHINDE, J.
DATE : 07th JANUARY, 2020.

P.C.

Heard.

2. Applicant is seeking enlargement on bail in Crime No. I - 18 of 2019 registered with RCF Police Station, Mumbai for the alleged offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860 ('IPC' for short) and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

3. On 14.01.2019 survivor missed her menses. On examination, Doctor opined that she was carrying four months pregnancy. Her mother repeatedly asked about the incident, however, it appears, she was not willing to disclose. At last, she disclosed about the incident of alleged sexual assault. A report was thereafter, lodged on 28.01.2019, whereupon, the subject crime came to be registered. In course of the investigation, it was revealed that the applicant is a married person having a child. Incidentally, the applicant was also living in the same building where survivor was living. While the complaint was lodged on January, 2019, the alleged sexual assault occurred somewhere in September - October, 2018 during the course of which, she did not disclose the alleged sexual assault to her mother.

4. The complaint indicates that she was reluctant to disclose the name of the applicant, even after she was carrying pregnancy. In this peculiar circumstance, prima facie, it is to be held she had

voluntarily agreed to keep the physical relation with the applicant.

5. In the complaint, the survivor alleged that the applicant had promise to marry her and therefore, she had succumbed to his desire. It may be stated that the applicant and the survivor, both were living in the same building. The age of the survivor is 17 plus. In this circumstance, it would be unreasonable to hold that the survivor was not aware of the marital status of the applicant. The given circumstance thus reinforces the fact and suggests that the victim had voluntarily agreed to keep the physical relations with the applicant. All these facts lead to a prima facie observation that her consent was not obtained by force, coercion or on the misconception of the facts. It may be stated that a 17 plus years old girl is a late adolescent that means she is no longer a child but not yet an adult either.

6. In view of the facts of the present case, it is

prima facie observed that the prosecutrix possessed the mental capacity to actively understand the nature, circumstances and consequences of the act to which she had consented. This can be inferred from her deliberate withholding of the information of her alleged sexual relations and her subsequent pregnancy from her mother i.e. the complainant. It must also be stated that, as much as the special laws such as POCSO prescribe stringent provisions for grant of bail, where the concept of consent is irrelevant yet, in such cases, it is quintessential to point that this Court is empowered to pass such orders which are necessary to secure the ends of justice. While the question of the accused-applicant's guilt is to be considered on its merits at the trial, presently, at the stage of bail, this Court has to consider prima facie, the circumstances under which the offence is committed by the accused. Additionally, the investigation in the case is over. The trial may not commence in the near future. It is argued that the applicant's presence for the trial can be secured by imposing conditions.

7. In view of the facts of the case, the application is allowed on the following terms.

ORDER

(i) The applicant is directed to be released on bail in Crime no.18 of 2019 registered with RCF Police Station, on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall not live in the jurisdiction of the RCF police station till the time the victim is examined as a witness;

(iii) The applicant shall furnish his particular of his residential address as well as permanent address and mobile number to the investigating officer within seven days from the date of his release on bail;

(iv) The applicant shall not tamper with the

evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

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

9. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

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

(SANDEEP. K. SHINDE, J.)