

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

CRIMINAL BAIL APPLICATION NO. 2696 OF 2019

Pravesh Lalbahadur Jaiswar ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Anjali Patil a/w Arun Rajput,
Advocate for the Applicant.
Mr. Avinash Khamkhedkar, APP for Respondent-State.
Mr. Ravindra Wani, P.S.I., Antop Hill Police Station.

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CORAM : SANDEEP. K. SHINDE, J.
DATE : 09th JANUARY, 2020.

P.C.

Heard.

1. It is an application under Section 439 of Code of Criminal Procedure, 1973.
2. Applicant seeks enlargement on bail in Crime no. 73 / 2019 registered with Antop Hill Police Station for the alleged offences punishable under Section 363,

376 of the Indian Penal Code, 1860 ('IPC' for short) along with sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short)

3. The applicant is a 19 years old college student while the victim is 15 years and 11 months old, also a college student. It appears from the victim's statement that her love affair with one Sechan Prajapati was not acceptable to family members and on that count, she was subjected to verbal harassment behaviour like threatening yelling and/or insulting by family members. The statements prima-facie indicate and suggest that she was therefore reluctant to go home.

4. On 28.02.2019, she left from her home on pretext of attending college, but instead, went to Chinchpokli around 4 p.m. and called Bechan Prajapati (her boy friend) to meet her. She had told him about verbal harassment meted out to her by her family members and further told that she would consume poison

in protest. However, it appears that he tried to convince her to go home and also gave her Rs.100/-. The victim did not go home but instead, went to King Circle via Mahim. Thereafter, it appears that at 11:30 pm., she had called another friend Pravesh Lalbahadur Jaiswar (applicant), who had, then, met her. She alleged that at 12:30 am (on 01.03.2019), the applicant gave her a Bhang tablet (Bhang is the least potent of the cannabis preparations used in India) and thereafter committed the sexual assault. She further stated that at 3 am, both went to the house of the applicant's friend namely Mr. Karan Jaiswar, who had then accompanied both till 07:00 am. Afterwards, Karan Jaiswar dropped the victim to her college and thereafter she reached home at 11:00 am on 01.03.2019.

5. Subsequently when the victim was sent to hospital for medical examination, she did not tell Medical Officer about the 'Bhang' tablet being given to her by the applicant.

6. In this case, victim's father is the complainant and the story narrated by him to the police is utterly different from the version/statements which is evident from the statement given when he states that on 28.02.2019, when victim was walking through the King Circle Railway Station road, a person had enticed her and had committed the alleged sexual assault.

7. Therefore, the allegations on the face of the FIR are not probable and additionally the facts narrated by the complainant in clear terms indicate that the applicant did not force the alleged sexual assault on her. The statement of victim prima facie, reveals that she had voluntarily left her father's home and had a capacity to know and understand the full import of what she was doing. Her statement also shows that she had voluntarily called the applicant and had remained in his company without any fear which reflects of the conscious choice made by her, to be in his company throughout the night. Her statement also

indicates that her friends Bechan Prajapati as well as Karan Jaiswar who had persuaded her to their level best to return home, but she did not budge.

8. Whereas the stringent provisions of the POCSO have been invoked, the facts of the case and in particular the victim's conduct, who is a College student and has the capacity to know and understand the full import of what she was doing, a case is made out to grant bail. The investigation in the case is over. It is submitted that the applicant's custody can be secured by imposing conditions. The trial may not commence and conclude in the near future. There are no criminal antecedents against the applicant who is 19 years old.

9. The application is therefore, allowed.

ORDER

(i) The applicant is directed to be released on bail in Crime no.73 of 2019 registered with Antop

Hill Police Station, on executing P.R. Bond for the sum of Rs.25,000/- with one or more sureties for the like sum;

(ii) The applicant shall furnish particulars of his residential address and contact 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;

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

11. It is made clear that the 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.

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

(*SANDEEP. K. SHINDE, J.*)_