

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

**BAIL APPLICATION NO.2914 OF 2019**

Indrakant Badri Jha ... Applicant  
Vs  
The State of Maharashtra & Anr. ... Respondents  
...

Mr. Manohar S. Mandavkar for the Applicant.  
Mr. S.R.Agarkar , APP for the Respondent-State.  
PI Ganesh B. Pawar attached to Dindoshi P.Stn. Present.

**CORAM : SANDEEP K. SHINDE J.**  
**DATE : 13TH JANUARY, 2020**

**P.C. :**

Heard.

2 Applicant/Accused No.1 in Crime No.534 of 2017 registered with the Dindoshi Police Station for the offences punishable under Sections 363, 376 read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**' for short), seeks his enlargement on bail.

3 Applicant was released on 23<sup>rd</sup> October, 2017

2019.odt

(Default Bail) under Section 167(2) of the Code of Criminal Procedure, 1973; however, on 16<sup>th</sup> July, 2019, applicant was directed to surrender to the State when, found that applicant's release was incorrect.

3 Be that as it may, as per the report dated 3<sup>rd</sup> August, 2017 of the Grant Medical College, Department of Psychiatry (at Page 181), victim is, *"a patient suffering from mental health retardation of moderate severity and her mental age is 7 years."*

4 On 15<sup>th</sup> July, 2017, victim left her parents' home saying that she was going to her aunt's place for having dinner. She did not return home and, therefore, her mother lodged missing complaint on 16<sup>th</sup> July, 2017. Victim returned home on 19<sup>th</sup> July, 2017 and thereafter her supplementary statement was recorded on the same day. It appears from her statement that a unknown person had taken victim to one lodge/hotel at Village: Madh, Marve and committed sexual assault on her.

5 In the investigation, police have seized visitors'

register, wherein the entry was found disclosing that the applicant, had been to the said lodge/hotel on 18<sup>th</sup> July, 2017. Report of the handwriting expert shows, specimen handwriting of the applicant tallies with the entries made in the visitors' register. Besides, in the Test Identification Parade held on 1<sup>st</sup> September, 2017, victim and employee from the said lodge/hotel had identified the applicant.

6           The aforesaid evidence, therefore, prima-facie, discloses complicity of the applicant in the crime.

7           The learned counsel for the applicant has placed on record two orders passed by this Court wherein the similar allegations were made against the applicant therein by the victim. I have perused both the orders; wherein there is no reference to the report dated 3<sup>rd</sup> August, 2017 of the Grant Medical College, Department of Psychiatry. Prima-facie, therefore, in both these orders, the fact that the patient/victim is suffering from, mental retardation of moderate severity, was not brought to the notice of the learned Judge of this Court.

8           Be that as it may, in view of the mental health report of the victim and other incriminating material on record, it is not fit case to release the applicant on bail. Application is rejected.

9           Since the applicant is in custody from 21<sup>st</sup> July, 2017, trial is expedited.

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