

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

CRIMINAL BAIL APPLICATION NO. 3514 OF 2019

Farahan Abugalib Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Devendra Shukla a/w. Mr. Hare Krishna Mishra, Advocates for the Applicant.

Ms. A. A. Takalkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th DECEMBER, 2020.

PC :

1. This is an application for bail in connection with C.R. No. I-11 of 2019 registered with Shanti Nagar Police Station, Bhiwandi for offences punishable under Sections 376, 323, 506 of Indian Penal Code, 1860 (“IPC” for short) and Sections 4, 6 and 8 of Protection of Children from Sexual Offences Act, 2012 (‘POCSO Act’ for short). The FIR was lodged on 2nd January, 2019. The applicant was arrested on 14th January, 2019.

2. The victim is a girl aged about 14 years. In her statement dated 2nd January, 2019 it is alleged that the applicant is residing in the adjacent building. One of the occupant of the building, in which the accused resides had informed the victim that

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the applicant/accused intends to talk to her. He wants to marry her. The victim refused to accept the suggestion. Subsequently, accused tried to harass her. Accused then spoke to her on cellphone and told her that he want to marry her. The victim declined his proposal. Accused continued to harass her. On the same day, accused called her on the terrace of the building. He sexually assaulted her and threatened her that she should not disclose incident to anyone. Thereafter, accused had physical relationship with the victim on several occasions on the terrace of the building. On account of threat, she did not lodge complaint. On 1st January, 2019, the victim visited the terrace of the building alongwith brother. Accused was present on the terrace. There was sexual relationship between them. On 2nd January, 2019, the accused called her at his residence. The victim visited his residence. His parents and sister were present in the house of the accused. Accused told her that he would not perform marriage with the victim. The sisters of the accused assaulted the victim. Hence, the complaint was lodged on 2nd January, 2019.

3. Learned Advocate for the applicant submitted that the story is concocted. The complaint is false. Assuming that the allegations to be true, the relationship appears to be consensual. The victim and the family members had suppressed the age of the victim.

The documents relied by the prosecution to establish the age of the victim are fabricated. Ossification test of the victim conducted during the course of investigation indicate the date of birth of the victim was 18 to 19 years. The applicant was brutally assaulted by the family members of the victim and First Information Report in this regard was lodged by him with Shanti Nagar Police Station on the same day i.e. 2nd January, 2019 for offences punishable under Sections 452, 326, 354, 323, 506, 427, 141, 143 and 147 of IPC. The sisters of the applicant were also assaulted and hence provisions of POCSO Act also invoked in the complaint filed by the applicant.

4. Learned APP submitted that prima-facie the documents on record would indicate that the victim was minor, she was aged around 14 years. The relationship was not consensual. The victim was threatened. It was forcible sexual assault. The defence of the accused is to be agitated during the trial.

5. I have perused the documents on record. From the tenor of the FIR lodged by the victim, it appears that according to her, there was sexual relationship between the applicant and the victim on the terrace on several occasions. Her version also reflects that once her brother had accompanied her. There are discrepancies relating to the documents regarding date of birth of the victim. The ossification test report on record indicate that victim is aged about

18 to 19 years. There is counter case from the applicant for assaulting the applicant and his family members. Considering the factual aspect as aforesaid, the case for grant of bail is made out.

6. Hence, I pass the following Order:

ORDER

- i) Bail Application No. 3514 of 2019, is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. I-11 of 2019 registered with Shanti Nagar Police Station, Bhiwandi on furnishing P.R. bond in the sum of Rs. 25,000/- (Twenty Five Thousand) with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till further order.
- iv) Applicant shall not approach the victim or her relatives;
- v) The applicant is permitted to furnish Cash Bail Security in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety
- vi) Bail Application stands disposed of accordingly.
- vii) This order will be digitally signed by the Private

Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)