

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

BAIL APPLICATION NO.3631 OF 2019

Mohd. Javed Abdul Razzak Shaikh	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Ms.Anjali Patil, Advocate for the Applicant.

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

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 21, 2020.

P.C.:

This is an application for bail in connection with C.R.No.156 of 2019, registered with Nagpada Police Station, Mumbai, for offence punishable under Sections 376(2)(n), 363 and 344 of Indian Penal Code (“IPC”, for short) and under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act (“POCSO Act”, for short). The applicant was arrested on 8th May, 2019.

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2 First Information Report (“FIR”, for short) was lodged by the father of the victim girl who was allegedly about 16 years old at the time of incident. It is alleged that the victim had left the

house on 7th April, 2019 after telling her mother that she is going to the house of Parveen. However, it was found that the victim has not gone to the house of Parveen. The family waited for victim. She did not return home. Inquires were made with the relatives. However, the whereabouts of the victim could not be traced. Hence, FIR was lodged on 6th May, 2019 under Section 363 of IPC. The victim had returned home on 7th May, 2019. Her statement was recorded on 8th May, 2019. In the said statement, she stated that on 7th April, 2019, while she was on the way to the house of Parveen, she met accused. He made her to sit on his motorcycle and took her to Walkeshwar. He threatened her. Thereafter, she was taken to Kurla (East). She was kept in a room. Accused developed sexual relations with the victim under coercion. He threatened her that in the event she lodges her protest, he would trouble her family members. He locked the room and left. Thereafter, the accused used to visit the room during the day and have physical relationship with her. While going, he used to lock the room from outside. On 7th May, 2019, accused came to meet her and allowed her to go to her house. However, he threatened her that if she disclose the incident to any person, she will have to face dire consequences.

3 Applicant was arrested. On completion of investigation, charge-sheet was filed.

4 Learned advocate for the applicant submits that there is no documents on record to establish the age of victim. The statement of the victim and the other witnesses would indicate that victim had voluntarily stayed in the room and had physical relationship with the accused. The room could not be closed as there was no toilet facility in the room and therefore it is difficult to accept that the room was locked from outside.

5 Learned APP submitted that victim was minor. Consent, if any, is not relevant. She was threatened and subjected to sexual assault.

6 I have perused the FIR and the statements of witnesses. The victim girl was missing from the house from 7th April, 2019. Complaint was lodged on 6th May, 2019. Perusal of statement of the victim dated 8th May, 2019, would indicate that she was occupying room which was allegedly locked from outside by accused whenever he used to leave the room. The statement indicate that during the day, the accused used to be with the

victim, and, there used to be physical relationship with her. However, while leaving, he used to close the room from outside. The spot panchanam reflect that there was no toilet facility inside the room. The statement of victim also mentions that she was allowed to leave on 7th May, 2019. The statement of Smt.Hasina Khan, mother of the victim mentions that the victim had told her that even prior to the incident in question, she had gone out of the house, and, there was sexual relationship between her and the accused with her consent on four occasions.

6 Considering the factual aspects of the matter, bail can be granted to the applicant on certain conditions:

:: ORDER ::

- (i) Bail Application No.3631 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.156 of 2019, registered with Nagpada Police Station, Mumbai, on his executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) Applicant shall attend concerned Police Station

once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

- (iv) Applicant shall not approach the victim and her relatives and shall not tamper with the evidence in any manner;
- (v) Applicant is permitted to furnish cash bail security in the sum of Rs.25,000/-, for a period of four weeks, in lieu of surety;
- (vi) Bail Application No.3631 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)