

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

BAIL APPLICATION NO.145 OF 2020

Mohammed Danish Mohammed Rais Ansari .. Applicant

Versus

State of Maharashtra .. Respondent

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Mr.Arun K. Rajput, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 09, 2021.

P.C. :

The applicant is arrested on 17th April, 2019, in connection with C.R.No.I-122 of 2019, registered with Navghar Police Station, Mira Road, District-Thane, for the offences punishable under Sections 376, 354, 363, 366, 506, 109 and 366(A) read with 34 of Indian Penal Code (“IPC”, for short) and Sections 3, 4, 8, 12 and 17 of Protection of Children from Sexual Offences (“POCSO Act”, for short).

2 First Information Report (“FIR”, for short) was lodged by the victim girl aged about 16 years on 17th April, 2019.

3 The case of the prosecution is that about 2 to 3

months prior to lodging of FIR, she boarded auto-rickshaw while going to her college. The rickshaw driver Samshad Khan did not accept money from her. While she was leaving the college, the rickshaw driver again met her and told her that he would drop her home. She sat in the auto-rickshaw. He took her mobile phone number. Thereafter, she used to regularly visit the college in the same rickshaw. One day Shamshad told her that he loves her. Thereafter, Shamshad Khan met her near college and took her to Gorai beach. He touched her inappropriately. She protested. She was dropped by him by rickshaw. Thereafter, he was chasing her and trying to talk to her. He gave phone number of the victim girl to his friend. The victim received a call from unknown person. He gave his name as Danish Ansari. She met him. She was told by Danish Ansari (applicant) that Shamshad Khan is not a good person. Thereafter, the victim met applicant on 2 to 3 occasions. The victim told him that she wants to work at Film-city. The applicant told her that he knows some persons at film-city. On 9th April, 2019, film city is holding interviews. On 9th April, 2019, the applicant accused came with car. She was taken to Dhaba near Gorai beach. He told that interview will be conducted at lounge of Dhaba. He ordered food and softdrink for victim. He took her to a room at Dhaba. She consumed food. She felt dizziness. The

accused removed her clothes. She regained consciousness after one hour. Applicant clicked her photographs, and, threatened her that her photographs will be made viral. She was molested. She was dropped by applicant and thereafter she joined her classes. She was not keeping well. She was taken home by parents. She was admitted to hospital. Thereafter, she lodged the complaint on 17th April, 2019. Applicant was arrested. His cell phone was seized.

4 It is submitted that the applicant has been falsely implicated in this case. Although the victim had visited doctor on 9th April, 2019, she did not disclose the alleged incident. In the letter dated 20th April, 2019, issued by Shiv Om Hospital to police inspector, it was stated that the victim had visited them with complaint of unconsciousness. She told that her father beats her for mobile phone. She left without taking any treatment. The victim was taken for medical examination. However, there was no injuries to support the version of the complainant/victim. She was of the age of understanding. She had voluntarily accompanied the accused. The employee of the hotel has not noted any suspicion about the visit of the victim and the applicant. Nothing incriminating was recovered from the applicant. Objectionable photographs were not found in the cell phone. In the medical

history provided to doctor during the medical examination, the victim has not stated about the interview which was to be conducted at Gorai. The call details between the applicant accused and the victim shows that she was well acquainted with the applicant. The victim herself had called the applicant on 14th March, 2019. The co-accused has been granted bail. Investigation is completed and chargesheet is filed.

5 Learned APP submitted that the victim was minor. It was not a consensual act. The consent, if any, is immaterial since the age of the victim is 16 years at the time of incident. The victim was sexually assaulted by the applicant. The contradictions, if any, in the version of the victim can be looked into during the trial.

6 I have perused the chargesheet. According to the victim, she got acquainted with Shamshad Khan. She had given her cell phone number to him. Shamshad Khan gave the mobile number of the victim to the applicant. Thereafter, the applicant got acquainted with her under the pretext of film-city interview. The victim was taken to Gorai on 9th April, 2019. They visited Dhaba. She ate food at Dhaba. She was molested. During the

course of investigation, statements of witnesses were recorded. Chargesheet is filed. The letter written by Shiv Om Hospital to police inspector mentions that the victim had complained of assault by her father. The history provided by the victim on 18th April, 2019, do not refer to the alleged interview for which she was taken to Gorai by the applicant accused. The victim had stated that she was given fried rice to eat and soft drink and red bull. After eating, she became unconscious and does not remember what had happened. She has referred to alleged act of fingering. The accused dropped her in his car. Medical examination report do not refer to any injury on her person. It is also mentioned that there was no penetrative sexual assault. Statement of Virendra Shukla dated 20th April, 2019, mentions that on 9th April, 2019, the victim had visited hospital along with her father. She informed the doctor that she is assaulted by her father. Statement of victim was also recorded under Section 164 of Cr.P.C. She has alleged that she was subjected to molestation and the accused had clicked photographs. There were no objectionable photographs in possession of the applicant. Considering the factual aspects of the matter, further detention of the applicant is not necessary.

:: ORDER ::

- (i) Bail Application No.145 of 2020, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.I-122 of 2019, registered with Navghar Police Station, Mira Road, District-Thane, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report concerned police station once in a month on first Saturday between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) The applicant shall not approach the victim and shall not tamper the evidence in any manner;
- (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;
- (iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)