

1. Heard the applicant who appears in-person through video conferencing, learned APP for the Respondent – State and the learned

appointed advocate for the victim and the original complainant. The original complainant is also present through video conferencing.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 472 of 2016 registered with the Pimpri Police Station, for the alleged offences punishable under Sections 366A, 376, 417 of the Indian Penal Code and under Sections 3, 4, 13 and 14 of Protection of Children from Sexual Offences Act.

3. The applicant is appearing on video-conferencing through Jail. He submits that the allegations as against him are false. He submits that there is no evidence, direct or indirect to connect him with the alleged offences. He submits that although the incident is stated to have taken place on 9th February 2016, the FIR was lodged only on 13th August 2016 and as such there is a delay of six months in lodging the FIR. The applicant submits that he was arrested on 29th October 2017 from Madhya Pradesh. According to the applicant, it is a case of mistaken identity. He submits that he is Jitendrakumar Ramratan Mishra and not Aditya Mishra, as alleged. He submits that nothing incriminating has been recovered or seized from him. According to the applicant, there are material discrepancies in the statement of the victim girl and the complainant. He submits that the victim

girl in her statement dated 13th August 2016 has stated that the incident took place in a flat at Pimpri, whereas in her supplementary statement dated 17th August 2016, has stated that she had lied earlier that the incident had taken place in a flat and that the incident had not taken place in a flat but in an open park. He submits that after 13 days, the victim girl's 164 statement was recorded i.e. on 1st September 2016, in which the victim girl has stated that the incident had taken place in a flat and there were two incidents and not one, as alleged in her statement dated 13th August 2016. He submits that the spot of the incident, has not been established i.e. whether the incident took place in a flat or in an open park. He submits that if the incident had taken place in open park, the said park is located in a prime location at Pimpri and that during 6:00 to 7:00 p.m. it is crowded. He submits that the police have failed to hold the Test Identification Parade to show that it is the applicant who was the person who sexually assaulted the victim girl. According to him, the details mentioned by the victim girl in the FIR did not match with the details of the applicant in the arrest memo. The applicant submits that he had never been to Pune/Pimpri or Mumbai. He submits that the Chemical Analyzer's Report is negative. He further submits that he has completed his B.Tech Engineering and was preparing for his Union Public Service Commission (UPSC) Exams, at the relevant time.

4. Learned APP as well as the learned appointed advocate for the victim and the original complainant oppose the application. Learned APP is unable to explain the discrepancy, with respect to the spot where the alleged incident took place, as disclosed by the victim girl, in her 161, supplementary statement and her 164 statement. According to the learned appointed advocate for the victim and the original complainant, the victim girl had never given any supplementary statement dated 17th August 2016. She disputes that the victim girl gave any such statement that the incident took place in a park.

5. Perused the papers and the statement of the victim girl recorded under Section 161 of Code of Criminal Procedure dated 13th August 2016, supplementary statement dated 17th August 2016 and the 164 statement recorded on 1st September 2016. In the statement dated 13th August 2016, the victim girl has stated that she met the applicant at a social event in her college, where the applicant had come to advertise about his event and had gone on the stage in connection with the same. She has stated that the applicant disclosed his name as Aditya Mishra and that he was into modelling and disclosed that if anybody was interested, they could take passes from him. She has stated that on 9th February 2016, the applicant followed her, took her to a flat and sexually assaulted her. The applicant is

also alleged to have taken the video of the same. She has stated that she disclosed the incident to the complainant, who is her cousin sister-in-law, pursuant to which a complaint was lodged as against Aditya Mishra, aged 21 years, resident of Mumbai (full name and address not known). According to the victim girl, the said person by assuring her that he would get her modelling assignment and that he would get married to her, sexually assaulted her and took objectionable videos. In the supplementary statement dated 17th August 2016, the victim girl has stated that the applicant by promising marriage with her, had taken her to a garden, where he sexually assaulted her, against her wish. In the history given to the doctor by the victim girl, she has stated that she knew Aditya Mishra since 7 months and that she had met him outside a Gurudwara in February, where he introduced himself, told her, he can get her into modelling and they became friends; and that on 9th February 2016, he called her to meet him and took her to a room outside Pimpri and thereafter sexually assaulted her. She gave history of multiple episodes of penetrative sexual vaginal intercourse between February and March. In the 164 statement of the victim girl, she has stated that she met the applicant at the Annual Day Function of her College on 17th December 2015 and that she met him again on 9th February 2016 on the road at Pimpri and that the applicant took her on a motorcycle to Kalewadi to a flat, administered her lassi, showed her objectionable videos and also

told her that he would get married to her and take her to Mumbai. She has stated that he locked her in the said room and sexually assaulted her. She has also alleged that the applicant took objectionable photos of the act.

6. The spot panchanama dated 17th August 2016 shows that the victim girl had shown the spot at an open park and not flat. The details of the flat have not been mentioned in any of the statements i.e. the statement under Section 161 nor under Section 164. Whether or not, it is a case of mistaken identity, is a matter which will be decided by the trial Court. *Prima facie*, there is some discrepancy as to where the incident had taken place. Be that as it may, the applicant is in custody since 30th October 2017. Till date, the trial has not commenced.

7. Having regard to what is stated aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or more sureties in the like amount;

- (ii) The applicant shall attend the Alipura Police Station, District - Chhatarpur, Madhya Pradesh, on the first Saturday of every month between 10.00 a.m. to 12.00 noon, till the conclusion of the trial;
- (iii) The applicant shall not enter the jurisdiction of Pimpri Police Station, Pune, till the conclusion of the trial;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (vi) The applicant shall not tamper with the evidence or attempt to contact/influence/intimidate/threaten the victim girl, complainant, witnesses or any person concerned with the case;

(vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the trial Court, within two week's of his release;

(viii) The applicant shall deposit his passport, if any, in the trial Court, before his release;

(ix) If there are two consecutive defaults either in attending the Police Station or if the applicant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The application is allowed in the aforesaid terms and is accordingly disposed of.

9. Learned APP as well as the registry to communicate the said order passed today to the Superintendent of Yerawada Central Prison, Pune, so that the said authority can hand over a copy of the aforesaid bail order to the applicant. The Registry to also communicate the said order to the Sessions Court, Pune, forthwith, by fax.

10. The Investigating Officer, who is present today shall give an intimation to the family members of the applicant of the aforesaid order passed today.

11. In view of the aforesaid, the Interim Application being Criminal Interim Application No.418 of 2021 does not survive and the same is also disposed of.

12. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

REVATI MOHITE DERE, J.