

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2055 of 2013

Dilip Tukaram Kambale ... Applicant

V/s.

State of Maharashtra ... Respondent

Mr.V.V. Purwant, Advocate for the Applicant.

Mr.A.S.Shitole, APP for the Respondent State.

CORAM : SMT.R.P.SONDURBALDOTA,J

DATE : 23rd DECEMBER, 2013.

P.C.:-

1 The applicant was arrested on 21st November 2013 in C.R.No.1064 of 2013 registered with Satara City Police Station, Satara in the offence punishable under section 376, 506 of the Indian Penal Code and sections 3(b), 4, 5(m) of the Protection of Children from Sexual Offences Act, 2012. The claim of the applicant is that on the date of the incident, i.e. 21 November 2013, he was in his office from 10.00 a.m to 4.45 p.m, and during this period his wife and

daughter were at home. Therefore, there was no possibility whatsoever of the applicant having committed the offence.

2 The complainant is the father of the victim girl, aged 7 years. It is his statement that he is a resident of Apartment No.13 where he resides along with his family including his ailing brother and the victim girl. The practice of the family was to lock the house from inside since the only two persons staying in the house were the victim girl and the ailing brother. On 21st November 2013 at about 10.30 a.m, all other family members had left the house for their respective occupations leaving the victim girl and the ailing brother of the complainant in the house. When the complainant returned at 4.00 p.m, he found that the victim girl was behaving in a strange manner. She had also put on lot of oil on her hair. The complainant also found a packet of eatable near the wall. On seeing that, he asked his daughter whether she had gone downstairs. She replied in the affirmative. On a further query from him, she answered that she had been called by the applicant. She referred to the applicant as the father of '*Bhakti*'. When she went to his house, the applicant allegedly behaves with her in an inappropriate manner by inserting his finger in her private parts.

3 The applicant claims that on that day, he was in his office working there for the whole day. Since the police had not tested the claim of the applicant of being in the office on the relevant date and time, the application had been adjourned on the last occasion to enable the police to test the plea of alibi. The police have accordingly recorded statement of one Prakash Maruti Shivthare working in the office of the applicant. The applicant is working as a surveyor in City Survey office. The statement of City Surveyor Officer recorded by the police shows that on the day, the applicant was present in the office since morning and whenever the witness had called him, he had immediately attended his cabin. Then, at 3.00 p.m, the applicant was directed to record statements of some persons who had come from Pune. Accordingly, the applicant had recorded statements of more than five persons in the presence of the City Surveyor Officer. This statement of the City Surveyor Officer *prima facie* establishes the plea of alibi of the applicant.

4 Mr.Purwant, learned counsel for the applicant submits that the story of the prosecution is an impossible story for two reasons. Firstly, the house of the victim girl is on the fourth floor of the

building whereas the applicant resides on the ground floor. If the applicant were to call her by shouting from the ground floor, he would have been heard by several persons residing in the building. Secondly, at the relevant time, the wife and the daughter of the applicant were present in the house. There was no question of the applicant committing the offences alleged against him in the presence of his wife.

5 The statements of City Survey Officer recorded by the police as also the location of the two houses i.e. the house of the applicant and house of the victim girl create a doubt about genuineness of the complaint. Hence, the application is allowed.

6 The applicant be released on bail in C.R.No.1064 of 2013 filed with Satara City Police Station, for the offences punishable under section 376, 506 of the Indian Penal Code and sections 3(b), 4, 5(m) of the Protection of Children from Sexual Offences Act, 2012 in the sum of Rs.20,000/- with one or two sureties in the like amount. The applicant shall attend the concerned police station as and when called by the police. He shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the

facts of the case so as to dissuade him from disclosing any facts to the court or to any police officer. The applicant shall not leave India without the previous permission of the court.

(SMT.R.P.SONDURBALDOTA,J)