

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.9 OF 2015

Vijay Kumar Sabhajit Gond

... Applicant

Vs

The State of Maharashtra

... Respondent

Mr. Priyaksh Tiwari h/f Mr. A.M. Saraogi for the Applicant

Mrs. Rutuja Ambekar, APP, for the Respondent -State.

Mr. V.P. Babar, PSI, Ghatkopar Police Station, present.

CORAM: P.D. KODE, J.

DATED: FEBRUARY 9, 2015.

P.C:

Heard. Learned APP has objected the prayer for bail made by Applicant, charge-sheeted by Ghatkopar Police Station for commission of offences under sections 376 (I) (J) of the IPC r/w sections 4, 8, 12 and 18 of the Protection of Children from Sexual Offences Act on the ground that involvement of the Applicant in commission of such offences with a minor of nine years old being squarely borne from the material collected during the course of investigation.

2. However, perusal of the charge-sheet support the submission canvassed by learned counsel for the Applicant that initially offence under section 354 (A) of the IPC only was recorded.

Even the same was not changed after recording of the statement of sister of victim girl as well as after examination of the victim. It also supports the submission that offences under section 376 (I) (J) of the IPC was added only after the further statement of the sister of the victim girl and of the victim girl was recorded on 4.12.2013, i.e. after about five days of occurrence of the incident. Perusal of the relevant statements does not reveal the reason for which said further statements were recorded.

3. Learned APP tried to justify further recording of the statements on the ground that same were recorded as the victim girl complained of continuous pain. Learned APP, drew attention to papers of medical examination of the victim girl of 30.11.2013 which revealed her hymen being torn. Perusal of said statements and the fact that such findings were recorded way back on 30.11.2013 do not justify again recording of the statement of the victim girl. It appears accordingly as the materials in both the statements do not reveal plausible reason for once again recording statement of the victim girl. Even perusal of the medical papers though reveals the hymen being torn, they are silent whether it is fresh tear or old tear. Having due regard to such character of prosecution material regarding the involvement of the Applicant in commission of offences under section

376 (I) (J) of the IPC, the submission of the learned counsel for the Applicant that the applicability of the said section for the incident in question would be highly debatable question cannot be said to be altogether devoid of merit. Having regard to it, the prayer for bail deserves to be accepted by imposing strict conditions.

4. Resultantly, the application is allowed. The Applicant is directed to be released on bail in C.R. No.406 of 2013 registered with Ghatkopar Police Station, on furnishing P.R. Bond in the sum of Rs.75,000/- (Rupees Seventy Five Thousand only) with one or more sureties to make up like amount and subject to conditions that after his release the applicant shall (i) not enter the area under the jurisdiction of Ghatkopar police station; (ii) inform his place of abode to the I.O. and shall attend the police station of such area on every Monday in between 11:00 a.m. to 12:00 p.m. until further order; (iii) not indulge in activity of tampering, threatening, coercing, intimidating or pressurizing the prosecution witnesses in any manner; and (iv) not misuse the bail granted vide this order for fleeing away or for committing any further offence.

5. The application accordingly stands disposed of.

(P.D. KODE, J.)