

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.697 OF 2016

MR.AJAY BALLAN ANNAKAKIL)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Rajeev Patil, Senior Advocate, a/w. Mr.M.M.Baig, Advocate for the Applicant.

Mr.S.H.Yadav, APP for the Respondent – State.

Mr.S.B.Patil, API, Vartak Nagar Police Station, Thane, present in court.

CORAM : P N. DESHMUKH, J.

DATE : 13th JULY 2016.

P.C. :

1 Accused involved in Crime No.I-324 of 2015 registered with Vartak Nagar Police Station, Thane, for the offences punishable under Sections 377 and 506 of the Indian Penal Code (IPC) and Sections 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), has sought regular bail.

2 Learned counsel for the applicant has submitted that there is absolutely no evidence to establish contents of FIR which is lodged by mother of victim belatedly. It is contended that there is no medical evidence to establish involvement of applicant in the alleged offence and has thus contended that applicant came to be falsely involved without any reason and no immediate report came to be lodged by the mother, inspite of doctor, to whom victim was first referred, had informed her to arrange for police help. In the circumstances, it is contended that application be allowed by imposing stringent conditions upon the applicant, who is presently stated to be residing at Ambernath along with his family members.

3 The learned APP has opposed the application and has submitted that from the documents as well as statement of victim, involvement of applicant is clearly established. It is also pointed out that victim was subjected to sexual assault by the applicant by showing him video clipping on cell phone which came to be recovered at his instance, during the course of investigation, and

by referring to the statement of Medical Officer, who has been treating the victim after incident, has submitted that this by itself establish fact of victim being subjected to sexual assault and has thus opposed the bail.

4 Perused the report lodged by Shubhangi, mother of victim, dated 25th May 2015, wherein it is alleged that on 4th April 2015 she had left victim boy aged 6 years at the house of her in-laws, who was with them for the whole day and was left in his house at around 11.30 p.m. by the applicant. On arrival, victim started crying and on enquiry by his mother, the complainant, had informed that he was sexually assaulted by applicant by indulging into such act with victim boy after showing him video clipping on his cell phone.

5 FIR further reveals that prior to present incident, applicant has indulged into similar act with the victim, earlier on one occasion when complainant along with her family members had gone to Kerala, though there is no specific date of said

incident mentioned in the report. From further contents of report, it reveals that complainant informed said incident to her husband telephonically, who was, then, residing at Dubai, who informed complainant to take their son to Dr.Thakkar. Complainant, accordingly, on 11th April 2015 took him to Dr.Thakkar, who informed complainant to lodge police report, upon which, she informed that she would take necessary action on consulting with her family members, and thereafter, contacted NGO Majnis and with their assistance lodged present complaint.

6 From the contents of report it is therefore found that, applicant is alleged to have indulged with such act with the victim boy, since prior to August 2014 to 4th April 2015, of which report came to be lodged as aforesaid only on 11th April 2015.

7 Learned counsel for the applicant has strenuously submitted that the report is full of doubts and is an afterthought. In the light of submissions as aforesaid, I have considered statement of victim, which corroborates contents of report, of

applicant indulging into sexual assault with victim. However, on perusal of Medical Certificate dated 27th May 2015 issued by Government Hospital, it reveals that there were no injury marks on the anal and perianal portion of the victim nor anything abnormal was detected on his genitals. Similarly, on applicant being subjected to medical examination on 28th May 2015, his report is also negative, as it is stated that no external injuries are found on the person of applicant. If the case of prosecution as reveals from the report is to be relied of applicant having indulged in sexually assaulting victim boy, since prior to August 2014 till 4th April 2015, injuries on the person of applicant's private parts as well as on the person of the victim are expected, however as stated above, there is no medical evidence corroborating the contents of report or statement of victim. In the light of above said facts, and also considering the fact that report came to be lodged belatedly, as aforesaid, there appears substance in the case of applicant of his been falsely implicated in the present crime, for the reasons best known to the complainant.

8 Though prosecution has also opposed the application on ground of recovery of cell phone of applicant at his instance, which came to be seized under Memorandum panchnama during the course of investigation, on a specific query made to learned APP, on instructions from Investigating Officer, it is informed that the sim card of said cell phone though is forwarded to Forensic Lab to verify its contents, no report is received till the date. No any satisfactory explanation is put forth for not securing the Chemical Analysis Report. In that view of the matter, application is liable to be allowed, by imposing stringent conditions upon the applicant, as per order :

- i) Applicant shall be released on bail on his furnishing P.R.Bond in sum of Rs.25,000/- with one surety in like amount.
- ii) Applicant shall not enter the jurisdiction of Vartak Nagar Police Station, Thane, during the pendency of trial.
- iii) Applicant shall attend Ambernath Police Station on 15th day of each month, during the pendency of trial.

iv) Applicant shall not make any attempt to tamper any witnesses and in the event if he is found involved in any such activity, his bail shall be liable to be cancelled.

v) Applicant shall attend the trial court on each date of hearing.

(P. N. DESHMUKH, J.)