

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1004 OF 2016

Mahendrra Amardev Kharwal

@ Kharavar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr.M.VHolmagi i/b Roseline Nadar, Advocate for the applicant.

Ms.S.S.Kaushik, APP for the Respondent State.

PI Rajendra Vitthal Mandhare from Kasturba Marg P.Stn present.

CORAM : PN. DESHMUKH, J**DATED : 21st JULY, 2016.**

P.C. :

1 Accused involved in Crime No.I-372 of 2015 registered by Kasturba Marg Police Station for the offences punishable under Sections 363, 377 of IPC and Section 4 of Protection of Children from Sexual Offences (POCSO) Act, has sought bail.

2 Learned counsel for the applicant had submitted that applicant is obviously involved without sufficient reason by complainant as they were knowing each other since complainant used to visit shop where applicant was working. It is further contended that applicant be put to stringent conditions and be considered for grant of bail as he is in jail since date of his arrest, and trial will take sufficient time to conclude.

3 Learned APP has strongly opposed the application, contending that victim boy aged 7 years was sexually assaulted by applicant on more than two occasions on a false pretext and by offering him money. Learned APP has referred to the medical examination report, and had submitted that though no injuries are found on the person of victim, that by itself cannot be a ground for grant of bail, as the incident is reported later by one month, and in that event, no external injuries were noted.

4 By referring to statements of other witnesses i.e. Paresh, Rajendra and others, it is submitted that from their statement, involvement of applicant is clearly established. Application is thus prayed to be rejected.

5 Perused the report dated 25th October 2015 lodged by Padamsingh – grand father of victim boy who has reported that on 22nd October 2015 when the boy had visited their house for some festival, he was found having difficulty in walking as he was limping, and was thus inquired by the complainant as well as his wife Nanda, upon which victim disclosed that on 27th September 2015, during Ganpati Immersion day, applicant who is working in a grocery shop situated nearby, has on the pretext by offering him Rs.10/- took him behind Laxmi Shopping Center in the bushes and forcibly committed the natural offence. Victim had further stated that prior to this incident, applicant on two more occasions, had committed similar offence with him in the bathroom.

6 Perusal of statement of victim corroborates contents of report on all material aspects. In addition to that, he has also stated that he knows applicant as he is working in the nearby grocery shop where he used to visit, and as such, on coming in contact with applicant, on three occasions, applicant had sexually assaulted him, as aforesaid, and had extended threat not to disclose to anyone.

7 Further contents of FIR reveals that after this disclosure by victim in the night on 22nd October 2015 immediately on the next day, he was taken by complainant in a Government hospital at Kandivli. However, there was tremendous rush of patients and as such, he could not be medically examined, and on the same day, complainant visited the grocery shop where applicant was working and obtained his full name as stated in the report.

8 After registration of crime, victim was referred for his medical examination where he has given history of Sodomy and of having subjected to anal inter-course about one month before Ganpati festival by a person working in a neighboring shop.

9 Having considering the fact that applicant was medically examined after a gap of almost one month from the date of incident, possibly no external injuries in the form of abrasion or contusion or even redness could be noted by the Doctor at the anal region.

10 In that view of the matter, I do not find any substance when it is contended on behalf of the applicant that since there are no injuries found on the private parts of victim, false case is lodged against the applicant.

11 Similarly, learned counsel for the applicant had also commented upon the age of victim, contending that there is nothing on record to establish his age. However, I do not find any substance in this submission, as from the statements of witnesses, who are relations of victim, and also from medical documents, age of victim boy is stated as 7 years.

12 In that view of the matter, even in the absence of his medical certificate, at this stage, it can safely be held that the boy is minor.

13 In addition to above, involvement of applicant is established from the statements of Paresh, Rajendra as it appears that on their inquiry with applicant, he had confessed before these witnesses that he has sexually assaulted the victim.

14 Having considering facts as aforesaid, and as applicant admittedly does not have permanent place of residence in Mumbai, application is liable to be rejected.

15 Application is rejected.

(PN. DESHMUKH, J)