

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.795 OF 2017

Gunjesh Hrudaynand Tiwari	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Pankaj Pandey i/by Mr.Deepak Pradhan for Applicant.
Mr.Ajay Patil, APP, for State.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 10th July 2017

PC :

1. The Applicant is seeking regular bail in connection with CR No.I-301 of 2016 registered with Kolsewadi Police Station for offences punishable under Sections 376, 354-A and 377 of Indian Penal Code as well as under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act.

2. The prosecution case is that the Applicant-accused had visited the house of the complainant on the date of incident. The complainant, other family members and the Applicant were sleeping in the room. On the next day in the morning, it was noticed that the victim girl who is aged about four and a half years old, was suffering from pains and that she was not wearing her undergarments. The complainant thereafter checked up the CCTV camera and from the footage it was noticed that the Applicant-accused had sexually assaulted the victim girl. The entire act has been recorded in the CCTV camera. An FIR was lodged. The Applicant was arrested and since then he is in custody.

3. Learned advocate for the Applicant submits that although the incident had occurred in the night of 4th September 2016, the complaint was lodged on the next day afternoon at 2.30 p.m.. It is further submitted that several persons were sleeping in the said room and it is difficult to believe that such an act can be committed by the Applicant. It is further submitted that the complainant did not find it appropriate to check up the CCTV footage immediately and subsequently it is alleged that the incident is recorded in CCTV camera. He submitted that medical evidence does not indicate that there was any penetrating assault on the victim. It is submitted that the evidence of CCTV footage cannot be considered in the absence of certificate.

4. Learned APP opposed the application. He relied upon the evidence of CCTV footage which records the alleged act committed by the Applicant-accused. He also pointed out the medical evidence wherein it is stated that there is congestion and swelling of hymen. Learned APP further submitted that the application may be rejected.

5. Perused the statement of complainant and other documents on record, which show the involvement of the Applicant in the said crime. The CCTV footage records the act committed by the Applicant. The submission that the evidence of CCTV footage cannot be considered in the absence of certificate, can be agitated during the course of trial. The medical evidence also supports the prosecution case. Prima facie, there is evidence to show the involvement of the Applicant. Therefore, bail cannot be granted to the Applicant.

6. Hence, I pass following order :

ORDER

(i) Bail Application No.795 of 2017 is rejected.

(PRAKASH D. NAIK, J.)

MST