

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.862 OF 2017

RAJNISHKUMAR GOPAL SAH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Seema Santosh Singh, Advocate for the Applicant.

Ms.J.S.Lohokare, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.621 of 2016 registered with Juhu Police Station, for offences punishable under Sections 363 and 376 of the Indian Penal Code (IPC) and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act), by this application is seeking his release on bail, after filing of the charge-sheet.

2 Heard the learned advocate for the applicant/ accused. She argued that the applicant / accused is an employee of a vegetable vendor and father of the victim minor female child is also a vegetable vendor. Because of selling vegetables at a lesser rate, there was quarrel between both of them and therefore, the applicant / accused is falsely implicated in the crime in question. She further argued that evidence of the prosecution is contradictory in nature. Material witnesses have not proved case of the prosecution. If the present applicant / accused intended to commit the sexual assault, he would not have, in ordinary course, kept the window open. The the victim did not shout at the time of the incident. The prosecution has not recorded statement of other witnesses, who had gathered at the spot. History given to the doctor is also contradictory. The applicant is a young boy and he will come into contact with hardened criminals. Therefore, the applicant / accused be released on bail.

3 The learned APP opposed the application by contending that offence in question is serious.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet. The crime in question allegedly took place on 14th November 2016. According to the prosecution case, the victim of the crime in question is a female child aged about 12 years. She was playing badminton at the ground near her house. At that time, the applicant / accused took her to a room and there he had committed penetrative sexual assault on her.

5 The First Informant is relative of the minor female victim. She has stated that she had seen the incident in question by peeping inside the room where it took place. Her statement reveals that at that time, the applicant had denuded the minor female victim of the crime in question. He himself was seen sitting in the underwear at that time.

6 Statement of the minor female victim shows that the present applicant / accused had committed penetrative sexual assault. Her age is merely 12 years and as such, she may not be

aware about description of the sexual act. It is well settled that in such cases, evidence of prosecution is required to be considered in broader probabilities of the case of prosecution. It is not necessary for making out the offence of penetrative sexual assault, that hymen of the victim should always be found torn.

7 Considering the nature of the crime and the manner in which is is committed, no case for grant of bail is made out.

8 The application is rejected.

(A. M. BADAR, J.)