

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1297 OF 2017

Martus Marshal Lopes	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr.A.P. Mundargi, Senior Advocate i/b. Mr.K.B. Rajput, Advocate for the Applicant.
Mrs.Veera Shinde, APP for the Respondent – State.
API Subhash Markand, Waliv Police Station, District – Palghar, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 12, 2017.

P.C. :

This is an application for bail. The offence is registered with Waliv Police Station vide C.R.No.I-541 of 2016 for the offences punishable under Section 376(f)(I) and 506(2) of IPC as well as Sections 4, 6, 8 and 12 of the POCSO Act.

2 The prosecution case is that the victim is aged about 13 years. The mother of the victim used to work at the residence of the applicant as a house maid for a considerable time. The victim was studying in 7th standard in Zilla Parishad school. The

victim used to go to the house of the applicant whenever her mother was unable to pursue the daily work. It is alleged that on 24th April, 2015, the victim accompanied her mother to the house of the applicant. The wife of the applicant had gone out for work. It is alleged that the applicant committed sexual intercourse with the victim at the point of knife on that day. It is further alleged that whenever the victim used to go to the house of the applicant and the wife of the applicant was away, the applicant-accused used to sexually assault the victim. It is alleged that the victim girl was pregnant and she delivered the child. FIR was lodged on 4th October, 2016. The investigating authority had taken DNA of the child born to the victim and the report is negative.

3 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant is aged about 73 years. It is submitted that the allegations on the face of the record appears to be false and fabricated. The applicant has been arrested on 24th April, 2017. It is further submitted that at the instance of the applicant a complaint was lodged with the police prior to registration of the FIR. It is further submitted that the DNA report is negative and, therefore, the involvement of the applicant is not established.

4 Learned APP placed on record the DNA report. In the said report, it is stated that the DNA received from the blood samples of Namrata Khot, male child of Namrata Khot and Martin Lopees (applicant) were analyzed. The result of the DNA test were received and the opinion is also mentioned in the report. As per the opinion Martin Lopees is excluded to be the biological father of male child of Namrata Khot and it is concluded that Namrata Khot is biological mother of the male child. The said report is taken on record and marked "X" for identification. Perused the FIR and the charge-sheet which has been annexed to the application also perused the DNA report submitted by the learned APP. The applicant is aged about 73 years. He is in custody since April 2017. The investigation is completed and the charge-sheet has been filed. The DNA report is negative and do not support the prosecution case. In the circumstances the applicant can be released on bail.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1297 of 2017 is allowed;

- (ii) The applicant is directed to be released on bail in connection with C.R.No.I-541 of 2016, registered with Walvi Police Station, District - Palghar on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or more sureties in the like amount;
- (iii) The applicant is directed to report Walvi Police Station, District - Palghar once in a month on first Saturday of the month between 11.00 a.m. to 1.00 p.m., till further orders;
- (iv) The applicant shall not leave India without prior permission of the trial Court;
- (v) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)