

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1359 OF 2017

MANAV SUKHMOHAY SAMANT)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Akram Kapoor, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.109 of 2016
registered with Police Station Dharavi for offences punishable
under Section 377 of the Indian Penal Code as well as under
Sections 6, 8, 10 and 12 of the Protection of Children from Sexual
Offences Act (POCSO Act), by this application, is seeking his
release on bail.

2 Heard the learned advocate appearing for the applicant / accused. He argued that the applicant / accused is languishing in jail since last more than one year. The learned advocate for the applicant / accused further argued that First Information Report (FIR) is lodged by father of one of the alleged victim child on 9th October 2016. The Investigator could have recorded statement of alleged victims of the crime in question immediately. However, those statements were recorded belatedly after one week and thereafter. The learned advocate further argued that those statements were manipulated because of intervention of the NGO in the matter. Those statements suffer from improvements in the prosecution case, and therefore, the applicant / accused is entitled to be released on bail.

3 The learned APP opposed the application by contending that statements of victims of the crime in question reflect commission of aggravated penetrative sexual assault as well as carnal intercourse against the order of the nature by the present applicant / accused, and therefore, the applicant / accused is not entitled for bail.

4 I have carefully considered the rival submissions and also perused the charge-sheet.

5 According to the prosecution case, the present applicant / accused has committed aggravated penetrative sexual assault and an attempt to commit carnal intercourse against the order of the nature on 11 years old son of the First Informant, who is residing at Dharavi. The prosecution has further averred that the present applicant / accused is also involved in sexual harassment of other two male children aged about 11 years. Father of the victim male child, who is aged about 11 years, has reported that on the date of lodging of the FIR i.e. on 9th October 2016, the applicant / accused had shown obscene video clips to his 11 year old son and had caressed his chest. It is further reported in the FIR that the applicant / accused had shown obscene video clips from his cell phone to two male children aged about 11 years, named in the FIR.

6 Statements of alleged victims of the crime in question are recorded on 16th October 2016 and 26th October 2016. Son of the First Informant in his statement has stated that apart from showing obscene video clips to him and caressing his chest, the applicant / accused had touched his penis and had sucked his penis. The victim child further stated that by denuding him, the present applicant / accused had attempted to put his penis in his anus. Other two victims are stating about showing obscene video clips to them by the applicant / accused.

7 The alleged delay in recording statements of witnesses cannot be considered at the pre-trial stage. The delay, if any, comes to the aid of the defence only after cross-examining the Investigator on this aspect.

8 In the case in hand, the victim child is stating about aggravated penetrative sexual assault on him as well as an attempt to commit carnal intercourse against the order of nature with him by the present applicant / accused. There are two other

victims of the crime in question. All victims are teenage boys. The applicant / accused appears to be a resident of the same locality.

9 Considering the impact of the crime on the society and the nature of the crime in question, the applicant / accused is not entitled to be released on bail. Therefore the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)