

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

BAIL APPLICATION NO. 1416 OF 2017

Kishor Jinabhai Patel

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

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Mr.S.V. Marwadi i/b. Mr.Nadar Solomon John, Advocate for the Applicant.

Mr.V.V. Gangurde, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 2, 2017.

P.C. :

This is an application for bail in connection with C.R.No.I-95 of 2017, registered with Palghar Police Station. The offences were registered under Sections 376 and 506 of IPC and Sections 5, 6, 10 and 17 of the POCSO Act, 2012.

2 The prosecution case is that victim had ran away from the house and came into contact with accused no.2 namely Shobha Shankar Pawar @ Annu Mummy and was residing at Palghar. The victim started working in the house of the said Shobha. It is alleged that in the month of March 2016, accused

no.1 sexually assaulted victim and threatened her that she should not disclose it to anybody. Thereafter, said accused continued the relationship with the victim. It is further alleged that on 26th May, 2017, accused no.2 took the victim to Gulmohar Hotel at Umroli. She was sent along with one Sanjan Mama. Both of them consumed liquor and then she was taken to jungle where Sanjan Mama had sexual intercourse with her. Thereafter, the victim was taken to Dahanu to one Sharma uncle. Complaint was lodged on 27th May, 2017. The applicant was arrested on 31st May, 2017.

3 Learned counsel for the applicant submitted that there is no evidence to connect the applicant with the crime. The victim had named one Sanjan Mama as a person who sexually assaulted her. However, there is no cogent evidence to establish that the applicant is Sanjan Mama. It is further submitted that the accused was shown to the victim at police station and where she had identified the applicant as the same person as Sanja Mama. It is submitted that the said identification cannot be accepted in the absence of test identification parade. It is further submitted that there is no other evidence to establish that the applicant is known as Sanjan Mama. The applicant is in custody from the date of his arrest and presently he is in judicial custody.

No purpose will be served by keeping him in jail. Learned APP submitted that the victim had attributed the overt-act to one Sanjan Mama. The applicant had been identified in the police station as the same person. It is, therefore, submitted that the application may be rejected.

4 I have perused the FIR and the other documents which are annexed to the application. The identification of the applicant is done at the police station. There is no identification parade. There is no cogent evidence to establish that the applicant is known as Sanjan Mama. The identity of the applicant is, therefore, under the clouds of suspicion. The applicant has been in custody from the date of arrest and no purpose would be served by keeping him further in custody. Applicant is aged 60 years and having no criminal antecedents. In the circumstances, bail can be granted to the applicant on certain conditions.

5 Hence, I pass the following order :-

:: ORDER ::

- (i) Bail Application No.1416 of 2017, is allowed;

- (ii) The applicant is directed to be released on bail in connection with C.R.No. I-95 of 2017, registered with Palghar Police Station, 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 Palghar Police Station twice in a week on every Wednesday and Saturday between 11:00 a.m. to 1:00 p.m., till the filing of the charge - sheet;
- (iv) After filling of the charge-sheet, the applicant is directed to report Palghar Police Station once in a month on every first Saturday between 11:00 a.m. to 1:00 p.m., till further orders;
- (v) The applicant shall not tamper with the prosecution witnesses and shall not contact with the complainant;

- (vi) The applicant is permitted to furnish cash security for a period of four weeks;
- (vii) The observations made in this order are only for considering this application for bail and the trial Court shall not be influenced by it;
- (viii) Bail Application No.1416 of 2017 is disposed of accordingly.

(PRAKASH D. NAIK, J.)