

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1807 OF 2017

Sunil Babulal Yadav

Applicant

versus

The State of Maharashtra

Respondent

Mr.Vijendra Kumar Rai for Applicant.

Ms.Jyoti Lohokare, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 18th September 2017

PC :

1. This is an application for bail in connection with CR No.174 of 2015 registered with Kandivali Police Station, Mumbai for offences punishable under Sections 376 of Indian Penal Code as well as Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. The applicant was arrested on 26th April 2015.

2. The earlier bail application preferred by the applicant before this Court viz. Criminal Bail Application No.1193 of 2017 was withdrawn on 23rd June 2017. In the said order it was observed that after arguing the application for some time, on instructions, learned advocate for the applicant seeks withdrawal of the application. It is submitted by learned advocate for the applicant that the said application was withdrawn for the purposes of taking further instructions in the matter and thereafter on the basis of fresh

material, present application is filed. In pursuant to the withdrawal of Criminal Bail Application No.1193 of 2017, the applicant had also preferred application before the Sessions Court which is rejected on 10th July 2017 and thereafter present application has been filed before this Court. In view of the order dated 23rd June 2017, the regular Court vide order dated 8th September 2017 directed that present application be placed before this Court. Hence, the application is listed for hearing today.

3. The prosecution case is that the complaint is lodged by the mother of the victim. The victim is a student of 5th standard and she was aged about eleven years at the time of alleged incident. It is the prosecution case that the accused had enticed the victim to Manori and had sexually assaulted her. Since the victim could not bear the pain suffered by her, she told the incident to her mother and thereafter first information report was lodged. The statement of the victim is also recorded by police during the course of investigation which corroborates the case of prosecution.

4. Learned advocate for the applicant submits that the applicant has been falsely implicated in the present case. It is submitted that medical evidence does not support the prosecution case. It is submitted that the victim used to call the applicant all the times and therefore, the case of the prosecution that the applicant-accused has enticed her to accompany him is false. Reliance is placed on the recording of telephonic conversations, which according to the applicant were the calls made by the victim to the applicant. The applicant is relying on the CD of the recorded telephonic conversations. It is further submitted that there are contradictory

versions of the complainant, the victim and other witnesses, which show that the applicant has been falsely implicated in the present case. It is submitted that the medical evidence and chemical analyser's report do not support the prosecution case as there is no presence of any semen on the cloths of the victim. It is submitted that there is no proof of the age of the victim girl. The applicant is the only bread winner of the family. He has a child aged about two years and his family consisting of minor child and his wife, is completely dependent on him. It is submitted that the applicant is in custody for a period of about two and a half years and considering the nature of evidence against the applicant, he may be released on bail. Reliance is placed on the order passed by this Court in Bail Application No.1036 of 2015 as well as order passed by Allahabad High Court in Criminal Miscellaneous Bail Application No.60 of 2014 (Sandeep Vs/ State of Uttar Pradesh), wherein according to the advocate for the applicant, in similar situation, bail was granted to the applicant therein.

5. I have perused the documents on record. The statement of the complainant as well as statement of the victim attributes the overt act to the applicant. The prosecution is also relying upon the statement of friend of the applicant-accused which was recorded on 3rd May 2015 which also corroborates the prosecution case. The victim and her mother has described the age of the victim as around eleven years. According to the advocate for applicant, the age of victim is about thirteen years. Be that as it may, the fact remains that the victim was minor and she was not capable of taking decisions about relationship with any person. The incident was narrated to her mother by the victim when it was unbearable for her as she was

suffering from pains. The medical evidence also indicates that there were old tear to the hymen. History given by the victim supports prosecution case. The prosecution case is that the victim was enticed by the accused on several occasions. The grounds raised by the applicant about the telephonic call being made by the victim and reliance on the recorded conversations, can at the most be agitated at the time of trial as his defence.

6. It is also pertinent to note that the applicant had preferred four applications before the Sessions Court which were rejected by the Court. The applicant had also preferred an application before this Court viz. Bail Application No.1143 of 2017 which was withdrawn on 23rd June 2017. Thereafter application was preferred before the Sessions Court and apparently there is no reference to the order withdrawing the application before this Court, which shows that the said fact was not pointed out to the Sessions Court. Even in the present application, there is no reference to the order dated 23rd June 2017 passed in Bail Application No.1193 of 2017. In any case, I have heard the learned advocate for applicant on merits and on perusal of all the documents as stated above and for the reasons mentioned hereinabove, I am not inclined to grant bail to the applicant. However, considering the fact that the applicant is in custody since more than two and a half years, the trial can be expedited.

7. Hence, I pass following order :

ORDER

(i) Bail Application No.1807 of 2017 is rejected;

(ii) Trial is expedited. The Trial Court is directed to complete the trial within six months from the date of receipt of a copy of this order;

(iii) The bail application stands disposed of.

(PRAKASH D. NAIK, J.)

MST