

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

CRIMINAL BAIL APPLICATION NO.209 OF 2018

Dharmendrakumar Lochan Gaud	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Viral Rathod, Advocate for the Applicant.
Ms.A.A. Takalkar, APP for the Respondent – State.
Mr.Amol Mandalkar, API Santacruz Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 19, 2018.

P.C. :

Applicant is seeking for bail in connection with C.R. No.334 of 2017, registered with Santacruz Police Station, Mumbai, for the offence punishable under Section 376 of Indian Penal Code (for short "IPC") read with Sections 5(n) and 6 of the Protection of Children from Sexual Offences Act, 2005 (for short "the POCSO Act"). The applicant is arrested on 17th July, 2017.

2 The case of the prosecution is that the victim is the daughter of the complainant. The victim is aged 10 years. First marriage of the complainant was solemnized when she was a minor. Since the first husband of the complainant used to assault

her, she was not having cordial relationship with him. Subsequently, she got married to another person and started residing at Santacruz, Mumbai, and, thereafter, to Chembur. From 2015 the complainant was residing with her second husband. The victim was residing with the first husband of the complainant at Santacruz. The daughter of the complainant used to insist upon the complainant to take her along with her. On 30th June, 2017, the complainant met her daughter near Juhu Garden, Santacruz (W) and, at that time, again the victim daughter of the complainant insisted that she should be taken home along with the complainant. On 2nd July, 2017, police attached to the Santacruz Police Station, Mumbai, came searching for the daughter of complainant at her house and took the complainant and her daughter to the police station. The victim refused to go with the first husband of the complainant, and, hence, the custody of the victim child was given to the complainant. On 11th July, 2017, complainant was called upon by the police along with her daughter for the purpose of inquiry before the Women and Child Welfare Committee (for short "the Committee") at Mankhurd. The victim girl was produced before the Committee, wherein she disclosed that one day her uncle (applicant) was sleeping besides her, and, at that time, he touched the victim

inappropriately to her private part. The victim disclosed the incident to her father and step mother, but, they remained silent. The said incident had allegedly taken place in June 2017. First Information Report ("FIR" for short) was registered on 12th July, 2017. On completing investigation charge-sheet is filed.

3 Learned advocate for the applicant submitted that the applicant is in custody from the date of his arrest and his further detention is not necessary. Complaint has been lodged by the mother of the victim girl. There are contradictions in the statements of the victim child. It is submitted that the alleged incident had taken place in July 2017. Thereafter, the victim was in custody of the complainant, and, for the first time, the victim had disclosed the incident before the committee on 11th July, 2017. It is submitted that as per the statement of witness Savitri Devi, the applicant is the resident of Uttar Pradesh, who had come for a medical treatment at KEM Hospital, Mumbai. The said witness has also disclosed that the victim and all others were residing together in a small house. On 30th June, 2017, the victim girl was missing hence the complaint was lodged with Santacruz Police Station, Mumbai. It is submitted that there is no medical evidence to substantiate the said charge. It is further submitted that Section 376 of the IPC is not made out. Learned counsel for

the applicant pointed out the statement of victim child recorded under Section 164 of Criminal Procedure Code which is in question and answer form. With respect to question no.8 which was relating to the incident, the victim girl had stated that the accused had touched her private part. It is submitted that the said version is contrary to the deposition before the Committee. It is submitted that if the version under Section 164 of Criminal Procedure Code is considered, the offence under Section 376 would not be attracted. He also submitted that Section 5(n) of the POCSO Act is not attracted and at the most the provisions of Sections 7 and 8, which is punishable with maximum sentence of five years. It is submitted that there is no antecedents against the applicant and he is in custody for long period of time. Trial has not began. Learned APP submitted that statement of victim girl before the Committee deserves to be accepted. The overtact attributed to the applicant by the said statement would attract penal provisions of Section 376 of IPC. It is submitted that the child was examined subsequently and the question of having any medical evidence does not arise. The victim was aged about 10 years and, there is no reason for her to falsely implicate the applicant in the crime. The contradictions, if any, can be considered at the time of trial.

4 I have gone through the documents on record. Apparently, there is a dispute between the first husband of the complainant and the complainant. The child was in custody of the first husband of the complainant. The child was missing, hence, complaint was lodged at the police station. The child was found in the custody of the complainant. Subsequently, they were called at the police station and the child was produced before the Committee. It is pertinent to note that after the child had met the complainant, there is no disclosure of the alleged incident to the complainant who is her mother. It is also mentioned by the complainant that prior to the incident also the child has met her and insisted her that she should be taken along with her and even at that time there was no disclosure of the incident. Apparently, the alleged incident was mentioned before the Committee. The version of the complainant before the Committee and in her statement under Section 164 of Cr.P.C., is contradictory. If the statement made under Section 164 is considered, the provisions of Section 376 of IPC would not be attracted. The applicant is in custody since 18th July, 2018. There are no reports of criminal antecedents against him. Charge -sheet is filed. Taking into consideration the aforesaid circumstances, bail can be granted to the applicant.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.209 of 2018, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.334 of 2017, registered with Santacruz Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (ii) Applicant shall attend Santacruz Police Station, Mumbai, once in a Month on first Friday of the month between 10:00 a.m. to 12:00 noon, till further order;
- (iii) Applicant shall not tamper with the evidence;
- (iv) Bail Application No.209 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)