

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

CRIMINAL BAIL APPLICATION NO. 486 OF 2018

Salim Hassan Shaikh	... Applicant
Vs.	
The State of Maharashtra	... Respondent

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Mr. Murtuja Nazmi I/by Shabnam Shaikh for the applicant.
Mr. M.G. Patil, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 30th NOVEMBER, 2018.**

P.C.

1. This is an application for bail in connection with CR NO. 31 of 2017 registered with Sewree Police Station for the offence punishable under Section 376(2)(i)(j)(l) of Indian Penal Code read with sections 4, 8 and 12 of the POCSO Act.
2. The brief facts of the prosecution case is that the victim is five year old daughter of informant. On 19th March, 2017 at about 3 p.m. the informant noted that the applicant-accused had brought the victim in his arm from his house. The victim was crying, hence, the informant asked accused/applicant as to why the victim is crying. The accused/applicant informed that the victim fell down while chasing hen and he also informed that he had slapped

the victim since she was chasing the hen. The victim was continuously crying. The accused left. The informant then again asked the victim the reason for crying and at that time victim informed that the accused had removed her undergarments and inserted his finger in the vagina. The informant also noted that there was blood stain on the nicker of the victim. She was taken to Nursing Home at Sewree. Doctor advised informant to take the victim KEM Hospital where she was admitted. Subsequently, the First Information Report was registered.

3. Learned counsel for the applicant submitted that applicant is in custody from 19th March, 2017. Investigation is completed and chargesheet has been filed. Further detention of the applicant is not necessary. Applicant has been falsely implicated in this case. It is also submitted that statement of the victim was recorded belatedly on 15th April, 2017. It is submitted that there was no penetration or sexual assault and therefore Section 3 of the POCSO Act cannot be attracted. The procedure required to be followed as contemplated under the provisions of the POCSO Act was not followed. There are no criminal antecedents against the applicant. He is willing to comply any condition imposed by the Court.

4. Learned APP strongly opposed the application for bail. It is submitted that statement of victim clearly attributes the role of the applicant. It is submitted that victim had disclosed the incident to her mother who had lodged the FIR in which the act committed by the applicant has been clearly stated about his involvement. It is submitted that medical evidence supports the case of the prosecution and corroborates the statement of the victim child.

5. I have perused the First Information Report and the other documents which are part of the chargsheet. FIR was lodged by the mother of the victim on 19th March, 2017. The incident had occurred on 19th March, 2017 at about 1.30 p.m. in the afternoon. The informant has categorically stated that victim had informed her about the sexual assault committed by the applicant-accused. She had also noticed the blood stains on the undergarments of the victim girl. The said version cannot be brushed aside since FIR was lodged immediately after the incident and the version of the victim was noted in the FIR lodged by the victim's mother. There is sufficient evidence showing involvement of the applicant. The victim has stated that accused has put his finger in her vagina. There were blood stains found on the clothes. It is apparent from medical case papers that the victim was examined at KEM Hospital

and examination revealed tear at hymen & minimal bleeding, abrasions between Majora S. Minora which indicates that the manner in which the accused has committed act. Applicant has been charged for the offence punishable under Section 376(2)(i)(j)(l) of Indian Penal Code as well as offences under POCSO Act. Submission advanced by the counsel for the applicant can be adjudicated at the time of trial. There is evidence showing of involvement of the applicant. In the circumstances, no case for grant of bail is made out. Application stands rejected.

(PRAKASH D. NAIK, J.)