

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

BAIL APPLICATION NO.674 OF 2018

Babu Saylu Bandi
(At Present in Thane Central Prison) .. Applicant
Vs.
State of Maharashtra .. Respondent

.....
Ms.Anjali Patil, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 8, 2018.

P.C. :

This is an application for bail in connection with C.R. No.441 of 2017, registered with M.H.B. Colony Police Station, Mumbai, for the offences punishable under Sections 376 and 506 of Indian Penal Code (“IPC”, for short) and Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act (“POCSO Act”, for short).

2 Prosecution case is that the applicant is the neighbour of the complainant (victim). In the month of January 2017, when no one was in the house of the complainant, the

applicant took the complainant to his house and committed sexual intercourse. He also pressed her mouth, as a result of which she could not shout. She did not inform the incident to any person. Thereafter, in the month of February and March, the accused had sexually assaulted the complainant. The accused also took the complainant to hotel room and again sexually assaulted her. Subsequently, the victim had conceived which was revealed after medical examination. FIR was lodged on 14th November, 2017. Applicant was arrested on 15th November, 2017.

3 Applicant prefer an application for bail before the Sessions Court, which was rejected on 5th February, 2018.

4 Learned counsel for the applicant submitted that the victim was aged about 17 years and 9 months at the time of incident and from the tenor of the FIR, it can be seen that the relationship was consensual. It is submitted that the complaint itself mentions that the victim had visited hotel with the applicant and there was a physical relationship between them. It is submitted that the applicant is in custody from the date of arrest. Investigation is completed and further custody is not required.

5 Learned APP submitted that the victim was minor at the time of incident. Accused had forcibly sexual relationship with her. Consent is immaterial. It is further submitted that the date of birth of the victim is 17th February, 2003, and, thus, at the time of incident she was 14 years and 9 months. Prosecution is relying upon the School Leaving Certificate, which refers to the date of birth of the victim is 17th February, 2003. It is submitted that the said document is a part of charge – sheet. The dispute, if any, with regards to the age of the victim will be considered at appropriate stage. It is, thus, submitted that the application be rejected.

6 In the First Information Report, the victim mentions her age as 17 years and 9 months. She has also mentions her date of birth as 17th February, 2000. The School Leaving Certificate mentions that the victim was enrolled in the school on 15th June, 2009, and, her date of birth is mentioned as 17th February, 2003. In the FIR it is stated that in January 2017, the accused had forcible intercourse with the victim in her house. It is also stated that thereafter on several occasion, she was sexually assaulted. She was also taken to the hotel, where there was sexual relationship between them. It appears that there was physical relationship between the accused and the victim repeatedly. The

incident was not reported to any person on the earlier occasion. In the history given while medical examination, it is stated that she went out with the accused in November 2016 for tea and after having she left for school. Thereafter, she used to interact with him as he was her neighbour. Whenever opportunity was available, accused used to meet her. She has also stated that one day he had sexual intercourse with her but complete penetration was not there. There was multiple intercourse attempts by him as told by victim. Her family got to know about whole incident in November when relative took her to private doctor and got to know about entire incident. It is true that there is debate about the date of birth of the victim and it can be agitated at the time of trial. However, even considering the nature of the averments in the FIR, it appears that both of them were acquainted with each other, which has resulted in physical relationship on multiple occasion. Investigation is completed and the charge - sheet is filed. There are no criminal antecedents against the applicant. In the aforesaid circumstances, case for grant of bail is made out.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Applicant directed to be released on bail in

connection with C.R.No.441 of 2017, registered with M.H.B.Colony Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;

- (ii) Applicant shall not tamper with the evidence;
- (iii) Applicant shall attend the trial Court on every date of hearing;
- (iv) Applicant shall not stay within the jurisdiction of M.H.B.Colony Police Station, Mumbai, till conclusion of trial;
- (v) Applicant after his release, shall furnish the details of his residential address and mobile phone number to the investigating officer;
- (vi) Bail Application No.674 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)