

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

BAIL APPLICATION NO. 1079 OF 2018

Ketan Rasik Kothari

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Vijay J. Bhopatrao, Advocate for the applicant.

Mr. M.G. Patil, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 28th SEPTEMBER, 2018.

P.C.

1. The applicant is seeking bail in CR I-370 of 2017. The FIR was registered on 2nd December, 2017 for offences under Section 354A,(d) of Indian Penal Code and Sections 7, 8, 11 and 12 of POCSO Act. The applicant was arrested on 2nd December, 2017.
2. The prosecution case is that the victim is the daughter of complainant. The victim aged about 9 years was taking tuition with Mrs. Parul Kothari in the building situated in the complex of the complainant. She used to attend tuition classes from 7 p.m. to 9 p.m. onwards. She had joined the classes since July, 2017. Several other children were also studying in the said tuition class. However, being dis-satisfied with the classes, the victim as well as

her brother had discontinued the said classes and they have joined another class. On 17th November, 2017, Smt. Parul Kothari had sent the message that her family is going for picnic at Dahanu on 18th November, 2017 and the complainant's daughter (victim) be also sent with them. However, the complainant refused to send her daughter for picnic with them. Thereafter, son of Smt. Parul Kothari visited the house of the complainant with some prasad which was not accepted by the complainant. The complainant and her husband were suspecting the conduct of applicant/accused. The complainant and her husband enquired with the victim who looked frightened and after taking her into confidence she disclosed that while she was attending the classes the accused used to call her in the bedroom and after making her sit on the bed, he used to touch her in-appropriately on her chest, back and also used to kiss her. Sometimes the accused used to give her gift or something to eat. The said information was provided by the victim child to the complainant 15 days prior to lodging the First Information Report. It was further alleged that while the victim was playing in front of the building, the applicant/accused had given her chocolate and some gifts. The complaint was lodged on 2nd December, 2017 and subsequently the applicant was arrested.

3. The applicant preferred an application for bail before the Sessions Court which was rejected by order dated 21st March, 2018. Learned counsel for the applicant submitted that the investigation is completed and the chargesheet has been filed. The applicant is in custody from the date of his arrest and further custody is not required. It is submitted that the allegations made against the applicant are totally false. There are no criminal antecedents against him. The tuition classes were being conducted in the house in the presence of wife of the applicant and other children who used to attend tuition classes. There is no specific allegations of sexual assault in the FIR and the statement of the victim. The FIR was lodged belatedly which creates doubt about the version of the complainant and the victim. The sentence provided for the alleged offences is upto three years.

4. Learned APP submitted that the applicant has committed serious crime. The victim is aged about nine years and she has no reason to falsely implicate the applicant/accused. The statement is also corroborated by the complainant. The victim was a student who had joined the tuition class and the accused was not expected to misbehave with the victim child. The accused have committed the offence amounting outraging the modesty as well as the

offence under the POCSO Act.

5. The First Information Report was lodged on 2nd December, 2017. The information was provided to the complainant mother by the victim child 15 days prior to lodging the First Information Report. The statement of the victim child was recorded on 3rd December, 2017. In the statement she has narrated the act committed by the accused as reflected in the First Information Report. The statement of some of the students for attending the classes were also recorded during the investigation. One of the student namely Siddhant Tripathy has stated that the accused used to give Popcorn. It is also stated there were about 9 to 10 students in the class. The other student Rugved Ankare i.e brother of the victim has also stated that he was also given something to eat by the applicant/accused. The applicant is in custody from 2nd December, 2017. The offences are punishable with three years imprisonment. The investigation is completed and chargesheet has been filed. There are no criminal antecedents against the applicant. In the circumstances, the case for bail is made out.

ORDER

- i) Criminal Bail Application No. 1079 of 2018 is allowed;
- ii) Applicant is directed to be released on bail in connection with C.R. No.I-370 of 2017 registered with Mira Road Police Station, District Thane on his furnishing P.R. Bond of Rs.20,000/- with one or more sureties in the like amount;
- iii) Applicant shall attend Mira Road Police Station, District Thane, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further order;
- iv) Applicant shall not approach the victim or her family members or shall not indulge in act of threatening them;
- v) Applicant shall not tamper with the evidence;
- v) Bail Application No. 1079 of 2018 stands disposed of.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair
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by Sachidanand
Kuttan Nair
Date:
2018.10.12
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