

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

BAIL APPLICATION NO.1209 OF 2018

Sudhakar Madhav Pille	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Amit D. Hire, Advocate for the Applicant.
Mr.Y.Y. Dabke, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 4, 2018.

P.C. :

This is an application for bail in connection with C.R. No.60 of 2018, registered with Malvani Police Station, Mumbai, for the offences punishable under Sections 363 and 377 of Indian Penal Code ("IPC" for short) and Sections 8 and 12 of the Protection of Children From Sexual Offence Act ("POCSO Act", for short).

2 Applicant was arrested on 15th January, 2018. The prosecution case is that on 14th January, 2018, after having dinner, the complainant/victim boy had gone for natural call near seaside at around 9:30 p.m. When the complainant was returning home, one rickshaw stopped on the side of the road and the

complainant was called by the rickshaw driver. Applicant – accused who stays in the same area, was sitting in the rickshaw and he told the complainant to sit in the rickshaw and he would drop him to home. Complainant thereafter boarded the rickshaw. However, the accused took the rickshaw in a different direction. After halting the rickshaw at some place, the accused sat near the complainant and pulled his pant down and started touching him inappropriately. It is also alleged that the victim was asked to commit unnatural act. At the same time, one person was passing through the road, questioned the accused as to what he is doing. The said person then dropped the victim at his residence and informed his mother about the said incident. In pursuant to that, FIR was registered at about 1:30 in the night.

3 The investigation is completed and charge-sheet has been filed.

4 Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. He submitted that on the same day t 9:30 p.m., the applicant had lodged N.C. against the mother of the victim. It is further submitted that Section 377 of IPC is not attracted in this case. Charge under

Section 363 of IPC is also not made out. It is submitted that offences under Sections POCSO Act at the most punishable for three years. Applicant is in custody from the date of arrest and further detention is not necessary.

5 Learned APP submits that the accused is involved in serious offence. He has sexually assaulted the victim who was aged about 16 years. It is submitted that the applicant is charged with serious offence under Sections 363 and 377 of IPC and Sections 8 and 12 of POCSO Act.

6 I have perused the documents on record. On perusal of the FIR, it can be seen that the victim has stated that he was taken to a certain location by the accused and he was asked to perform certain acts and the accused also started touching him inappropriately. However, taking the prosecution case as it is, the ingredients to constitute the offence under Section 377 are absent in the complaint. It is pertinent to note that invocation of charge under Section 363 is also debatable. Other offences punishable under Section POCSO Act are punishable at the most with three years. Applicant is in custody since the date of arrest and the charge-sheet has been filed. It is also pertinent to note

that the statement of the complainant recorded under Section 161 and the statement under Section 164 are contradictory. Statement under Section 164 does not refer to all the alleged acts which are mentioned in the FIR. In the circumstances, case for grant of bail is made out. There are no antecedents against the applicant.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1209 of 2018, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.60 of 2018, registered with Malvani 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 enter into the area of the residence of the victim and his family members;

- (iii) Applicant shall not threaten the witnesses and shall not tamper with the evidence and shall cooperate in concluding the trial expeditiously;
- (iv) Applicant shall report Malvan Police Station, Mumbai, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;
- (v) Bail Application No.1209 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)