

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

BAIL APPLICATION NO. 1414 OF 2018

Sunny Mahadev Mane

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Ms. Anjali Patil for the applicant.

Mr. A.R. Kapadnis, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 29th AUGUST, 2018.

P.C.

1. The applicant is seeking bail in connection with CR No. 334 of 2017 registered with Nirmal Nagar Police Station for the offence punishable under Sections, 376, 363, 506 of Indian Penal code read with Sections 4,8, 9(N), 10 of POCSO Act and Section 67 B of Information Technology Act.

2. The case of the prosecution is that the victim girl was aged about 13 years at the time of incident whereas the applicant accused was 22 years old. They are related to each other. The mother of the victim girl lodged the First Information Report. It is alleged that her husband is residing separately since April, 2017. Her daughter was also residing with her husband. Complainant

went to bring her from Veeta Sangli where she is residing with her father. At that time, she noticed some spots on the person of victim girl and thus brought her back to Mumbai for the treatment. On 1st October, 2017, the victim girl went to her neighbour to give some food but did not return back. On 2nd October, 2017 also the victim girl did not return home whole day and at about 10 p.m she returned home. She was in frightened condition. Complainant made inquiry with her and she informed that on 1st October, 2017 accused took her to Juhu Beach. Thereafter, the accused took the victim girl to City Park Garden and committed sexual intercourse with her.

3. On receipt of the said information, the First Information Report was lodged. Subsequently, the statement of the victim girl was recorded, wherein she has stated that she has gone with the accused who is her cousin and he has outraged her modesty by touching her private part. The statement of victim girl under Section 164 of Code of Criminal Procedure does not refer to the allegations of sexual intercourse as stated in the First Information Report by complainant. The medical evidence also does not indicate that there was in sexual assault on the victim girl. There was no sign of rape on the victim girl. It appears that the victim

girl and the accused are related to each other.

4. Learned advocate for the applicant submits that investigation is completed and the chargesheet has been filed. No case under Section 376 of Indian Penal Code is made out. The other offences are at the most punishable with maximum sentence of five years. The applicant is in custody from 4th October, 2017. There are no criminal antecedents against the applicant.

5. Learned APP submitted that the statement of the victim girl attributes overt act to the applicant. The victim was minor. The accused has sexually assaulted.

6. I have perused the documents. The statement of the victim recorded under Section 164 of Cr.P.C. and the First Information Report are contradictory to each other. The medical evidence does not support the charge of rape. The applicant and the victim are related to each other. The applicant is in custody from 4th October, 2017. The investigation is completed and the chargesheet has been filed. There are no criminal antecedents against the applicant. In the circumstances, bail can be granted on certain conditions.

ORDER

i) Criminal Bail Application No. 1414 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 Nirmal Nagar Police Station which is subject matter in POCSO Special Case No. 584 of 2017 on furnishing P.R. Bond of Rs.20,000/- with one or more sureties in the like amount;
- iii) The applicant shall attend Nirmal Nagar Police Station once in a month on first Saturday between 10 a.m. to 12 noon till further order;
- iv) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses and shall not approach the victim or the complainant;
- v) The application stands disposed off.

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Sachidanand
Kuttan Nair
Date:
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(PRAKASH D. NAIK, J.)