

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

CRIMINAL BAIL APPLICATION NO. 1579 OF 2018

Hari Tuljaram Rampure

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Milan Desai I/by. Mr. T.R.Patil for the applicant.

Ms. A.A. Takalkar, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 19th OCTOBER, 2018.

P.C.

1. This is an application for bail in connection with C.R. No. 368 of 2017 registered with Kurar Police Station. The offences were registered under Section 354 of Indian Penal Code read with Section 8 & 10 of POCSO Act.

2. The prosecution case is that the victim and the applicant are residents of the same area. On 26th September, 2017 at about 8.00 p.m. the prosecutrix was playing hide and seek with her friends and at that time she was hiding near the gate of building. Applicant had allegedly caught hold and pulled her. Applicant groped her forcefully. The victim started crying and on enquiry the victim narrated incidents to her mother. She was taken to the

doctor for medical treatment. The First Information Report was lodged on 27th September, 2017 and thereafter immediately the applicant was arrested on the same day.

3. Learned counsel for the applicant submitted that applicant is in custody from the date of arrest. Primarily the offence under Section 354 of Indian Penal Code and there is no other allegation of sexual assault against the applicant. The investigation is completed and chargesheet has been filed. The statement of victim was recorded under Section 161 as well as Section 164 of Code of Criminal Procedure. In her statement under Section 161 of Code of Criminal Procedure she has stated that in the evening time she played hide and seek with her friends, at that time the accused had allegedly came from behind and caught her and tickled her and thereafter pulled her closely and groped her forcibly, whereas statement under Section 164 of Code of Criminal Procedure she has stated to the effect that on the fateful day in the night she attended Aarti of Goddess which was brought in pandal in their society and thereafter she was playing hide and seek with her friend Sandhya, at that time while she was hiding between the small space of the table where the watchman sits and the wall, accused had allegedly walked passed her and thereafter applicant

returned and held her from front and committed alleged act. On seeing her friend Sandhya coming to the place of incident, the accused left the scene of offence. It is submitted that alleged incident had occurred immediately after the Arti in the pendal of Goddess as the Navrati festival was in progress and it is difficult to accept the prosecution case since there will be several persons at the place of incident. Except prosecutrix and her friend, the incident is not witnessed by any other person. The statement of the watchman on duty is not recorded and there is nothing in the chargesheet to suggest that the watchman was absent. It is submitted that the said statement would be significant as it is the case of the victim that incident had occurred at the place where the watchman sits. There is variation in the time of occurrence of the incident in the statement under Section 161 and Section 164 of Code of Criminal Procedure. It is further submitted that it is the case of the victim that at about 8 p.m. her friend Tanvi and Bhoomi came to her house and called her for playing whereas statement under Section 164 of Code of Criminal Procedure victim has stated that she was playing with her friend Sandhya. It is further submitted that Investigating Officer has not recorded the statement of friend of the victim referred to by her and except that

they recorded the statement of one Tanishka Sanap who stated that she was playing with victim hide and seek and at that time she saw that applicant had allegedly caught the victim and on her going near them, he let her go. It is submitted that there is contradiction in the statement of victim and other witnesses. It is submitted that applicant is in custody for a period of one year. There are no criminal antecedents against the applicant. It is submitted that on the aforesaid circumstances, bail may be granted to the applicant.

4. Learned APP submitted that there is sufficient evidence to show the involvement of the applicant in the crime. The victim has attributed the specific overt act to the applicant in her statement under Section 161 and Section 164 of Code of Criminal procedure. There is no reason to falsely implicate the applicant in the said crime. The applicant and the victim are residing in the same building. Trial would proceed shortly after framing of charge.

5. It is noted that applicant was arrested on 27th September, 2017 and he is in custody for a period of one year. Learned counsel for the applicant had pointed out the several contradictions in the statement of the victim. This is not the stage

to evaluate the entire evidence as the trial is pending. However, taking into consideration the charge levelled against the applicant, the period of detention, the punishment provided by law, the circumstance put-forth by the learned counsel for the applicant and the fact that the investigation is completed and chargesheet has been filed, the applicant can be granted bail on certain conditions.

ORDER

- i. Criminal Bail Application is allowed.
- ii. Applicant is directed to be released on bail in connection C.R. No. 368 of 2017 registered with Kurar Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. Applicant shall report to the Investigating Officer of the concerned Police Station once in a month on first Saturday of the month between 10 a.m. to 12.00 noon, till further order;
- iv. Applicant shall not tamper with the evidence;
- v. Applicant shall not reside in the building where the victim and her family member is residing till the conclusion of the trial.
- vi. Applicant shall attend the trial Court during the course of hearing of the case regularly, unless exempted by the Court.
- vii. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)