

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

BAIL APPLICATION NO. 1682 OF 2018

Nitin Venkatesh Bhandari

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Aniket Nikam for the Applicant.

Mr. S.S.Pednekar, APP for the State.

Mr. Mangesh Shinde, Deputy Commissioner of Police, Zone 3, Pune City present.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : NOVEMBER 01, 2018.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid applicant, who has been arrested in C.R.No. 210 of 2015 registered with Warje Malwadi Police Station, Pune for offences under Section 363, 377, 307, 109 r/w. 34 of Indian Penal Code, and under Sections 4, 8, 5 (I)(J)(M)(R) and 6 of Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Aniket Nikam, the learned Counsel for the applicant. He submits that there is no prima material to show the involvement

of the applicant in the crime. He contends that the only material relied upon by the prosecution are the statements of Roshan Thakur and Sonu Rajkishore Thakur. He stated that a perusal of these statements indicate that these witnesses were called to the police station and were asked to identify the accused. The learned Counsel for the applicant submits that such identification has no evidentiary value. He submits that the applicant is in custody since 16th July, 2015 and in the absence of any material against him, he is entitled to be released on bail.

3. Shri Pednekar, the learned APP, concedes that the Investigating Officer had not recorded the statement of the victim. The learned APP also concedes that apart from the statements of these two witnesses there is no other prima facie material to show the involvement of the applicant in the above crime.

4. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the first information report lodged by the mother of the victim, who is a 7 years old boy. The first information report reveals that on 15th July,

2015 till about 8.15 p.m. the victim was playing in the temple premises. Since he did not return home, his parents and others searched for him in the temple premises and in the vicinity. At about 9.30 p.m. two persons came with the victim boy and told them that the said boy was found crying near a mining pit. The victim boy was crying and was unable to narrate anything. He had injuries on his chest and face. His pants/shorts were inside out. He was only uttering the words “Marle Marle” (I was assaulted).

6. The victim was admitted in Dinanath Mangeshkar Hospital and Research Centre on 16th July, 2015 as an emergency patient. The Medical Certificate issued by the Medical Officer of Dinanath Mangeshkar Hospital states it was a case of sodomy. The certificate further reveals that the victim was in respiratory distress due to hypoxia and shock; left tension pneumothorax required emergency ICD; Mild SAH; CLW over left ear pinna; Multiple bruising more on back; Anal canal tear; He required aggressive ICU management and invasive ventilator support.

7. The medical report thus prima facie indicated that the boy was sodomized. The mother of the victim boy therefore lodged a report

against unknown persons for kidnapping her son and having carnal intercourse with him.

8. The Investigating Officer, PI Kallappa Satu Pujari, recorded statements of the two witnesses, namely Roshan Rajkishor Thakur and Sonu Rajkishor Thakur, who had found the said victim boy crying and had brought him to the temple premises. These two witnesses have stated that on 15th July, 2015 at about 9.00 p.m while they were going to Varje Malwadi, Pune to give tiffin to their grandfather, they saw a crowd gathered near Ganesh temple and searching for a young boy. As they proceeded further, they saw an elderly couple standing on the road with a small child/boy. The said boy was crying and he was unable to disclose his name, address or any other details. He had sustained injuries. They suspected that he could be the same boy who was missing and whom the villagers were searching for. They brought the said boy near the temple premises and handed him over to his parents.

9. These witnesses have stated that later on as they proceeded to give the tiffin to their grand-father, they saw a boy with red T-Shirt and jeans aged between 20-22 years with two other boys of 16-17

years. They were under the influence of alcohol. The boy in red T-Shirt threatened them not to disclose to anyone about the boy whom they had found and rescued.

10. The records indicate that the Investigating Officer had arrested the applicant, the co-accused and two other boys (juveniles) on suspicion. On 17.7.2017 the Investigating Officer recorded the supplementary statements of these two witnesses. A perusal of the said statements reveal that the Investigating Officer had called these two witnesses at the police station had shown to them the five suspects. These witnesses claim that one of the suspects had told them that he and his friend had taken the said boy in an open space near a mine pit and that all five of them had carnal intercourse with the said boy, and when he resisted, they assaulted him with sticks. These witnesses had also stated that the said suspects, who were shown to them at the police station were the same persons they had met on the relevant day and who had threatened them not to disclose about the boy to anyone.

11. The records reveal that the Investigating Officer Mr. Kallappa Satu Pujari, for the reasons best known to him, had not recorded the

statement of the victim. Similarly, no Identification parade was conducted to establish the identity of the persons who were seen by the two witnesses. All that the Investigating Officer had done is that he arrested some suspects, produced them at the police station and asked the two witnesses to identify them. The only material against the applicant is his confessional statement and identification by the witnesses at the police station. Apart from this inadmissible material, there is no other material to show the involvement of the applicant in the above crime. Hence, there is no other option but to release the applicant on bail.

12. Now coming to the manner of the investigation, the records reveal that the Investigating Officer had arrested the applicant and others on suspicion. There can be no dispute that the police officer has ample powers to arrest any person against whom there is reasonable suspicion of being involved in commission of cognizable offence. However, this does not mean that the Investigating Officer can file the report/chargesheet only on the basis of suspicion that the person is involved in commission of the offence. Suffice it to say that the report/chargesheet under Section 173(2) is the culmination of

investigation, which envisages collecting legally admissible evidence relating to the commission of the offence. In ***Karan Singh vs. State of Haryana***, AIR 2013 SC 2348 the Apex Court has held thus:-

"12. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The Investigating Officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The Investigating Officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth." Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias. Words like 'personal liberty' contained in [Article 21](#) of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the Investigating Officer to ensure that an innocent person should not suffer from unnecessarily harassment of false implication, however, at the same time, an accused person must not be

given undue leverage. An investigation cannot be interfered with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous influence, and investigation must be carried out with equal alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under [Article 21](#) of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19, 20 and 21 of the Constitution. (Vide: [Babubhai v. State of Gujarat & Ors.](#), (2010) 12 SCC 254).

13. In the instant case, the records indicate that a young boy had been sodomized. The medical records also indicate that lust for unnatural carnal sexual intercourse and the perverse act had not only caused physical trauma but had left the boy in a state of deep shock and distress. The seriousness of the offence required thorough investigation. However, having gone through the records, it is noticed that the investigation of such a serious offence was conducted in a most casual manner. The Investigating Officer had chosen not to record the statement of the victim under Section 24 of the POCSO Act or through the Magistrate, under Section 164 Cr.P.C.

No steps were taken to establish the identity of those arrested under suspicion. Considering the lapses in a matter of such serious nature, the Investigating Officer was directed to file his affidavit. Accordingly, the Investigating Officer has filed his affidavit. In para 8 of the affidavit, the Investigating Officer has stated thus:

“ I say that as the victim was admitted in the Hospital and during the intervening period, the accused was remanded to Judicial Custody and inadvertently the police could not conduct the Test Identification Parade of the present Applicant, I once again tender my unconditional apology for not conducting Test Identification Parade of the present Applicant/Accused”

14. It is pertinent to note that the Investigating Officer, has not offered any explanation for not recording the statement of the victim. The only reason given for not holding the identification parade is due to 'inadvertence'. The plea of inadvertence, in my considered view reflects total indifference, insensitivity, inefficiency or something beyond that and cannot be accepted for whatever its worth.

15. It is also to be noted that the Senior Officer under whose

supervision the investigation was conducted has also not checked the flaws in the investigation. He did not ensure that the offence of such heinous nature was investigated thoroughly. It appears that he has allowed filing of the charge sheet, which is the outcome of shoddy investigation, without even going through the records. When crimes against children are on rise and Special Act has been enacted to provide robust legal framework for the protection of children from offences of sexual assault and to safeguard their interest, here is a case that is a perfect example of shoddy investigation. The effects of defective, negligent and careless investigation are well known. It has been observed by the Apex Court in ***Ram Bihari Yadav vs. State of Bihar AIR 1998 SC 1850*** that if primacy is given to a designed or negligent investigation, or to the omission or lapses created as a result of a faulty investigation, the faith and confidence of the people would be shaken not only in the law enforcing agency, but also in the administration of justice.

16. It has to be borne in mind that just as the accused has a right to fair and just investigation and trial, the victim of the crime also has a

right to get justice. Hence shoddy and defective investigation infringes the rights guaranteed to the accused and the victim and can have adverse impact on the social fabric of the society. The Code contains several provisions to obviate consequences of such shoddy or defective investigation. Section 173(8) Cr.P.C. is one of such provisions which can be resorted to at any stage of the trial to prevent miscarriage of justice. In this context it would be advantageous to refer to the decision of the Apex Court in ***Hasanbhai Valibhai Qureshi v. State of Gujarat (2004) 5 SCC 347.***

In paras 12 and 13 it has been held as follows:-

"12. Sub-section (8) of Section 173 of the Code permits further investigation and even de hors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

13. In Ram Lal Narang v. State (Delhi Admn.) MANU/SC/0216/1979; AIR 1979 S.C. 1791 it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should

inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real of actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court. In arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

17. In the instant case, the State has not taken recourse to the provisions of section 173(8) Cr.P.C. even though the alleged crime affects the societal interest. The State has failed to discharge its primary responsibility and has infact turned a nelsons eye and by its inaction allowed the truth and justice to be ultimate casualties. It is therefore imperative for the State through its prosecution agency to seek further investigation under section 173 (8) of the Code through a Senior Officer not below the rank of Deputy Suptd. of Police and to avoid subversion of justice delivery system.

18. As stated earlier, the Investigating Officer as well as the

superior Officer who was responsible for supervising the investigation, have abdicated their duty to unearth the truth and to bring to book the real culprits involved in committing such a grave crime. This is nothing short of dereliction of duty and needs to be inquired into.

19. Considering the gravity and seriousness of the matter, the Inspector General of Police, Kolhapur Range, is directed to look into the matter, to hold necessary inquiry against those responsible for conducting such shoddy investigation, and to take appropriate action. The Inspector General of Police, Kolhapur Range, is further directed to submit a report indicating the action taken against the erring officers as well as steps taken to prevent miscarriage of justice. The report shall be filed in the Registry within a period of three months from the date of receipt of the order.

20. Under the circumstances, and in view of the discussion supra, I pass the following order:

(i) The applicant who is arrested in C.R.No. 210 of 2015, registered with Warje Malwadi Police Station, Pune, is ordered to be released on bail on furnishing bail bond of Rs.30,000/- (Rupees

Thirty Thousand Only) with one or two solvent and local sureties in the like amount;

(iii) The applicant shall report to the Senior Inspector of Police, Warje Malwadi Police Station, on the first and third Monday of every month until further orders;

(iv) The applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer and in the bail bond;

(v) The applicant shall not change his residential address without prior permission of the concerned Court.

(vi) The applicant shall not interfere with the witnesses or tamper with the evidence in any manner;

. The Registrar (Judicial), to forward copy of this order to the Inspector General of Police, Kolhapur Range, for compliance and report.

. The Registry to place the matter before the court within one week from the date of the receipt of the Report.

(ANUJA PRABHUDESSAI, J.)