

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

BAIL APPLICATION NO.1742 OF 2018

Udaynath Kisun Tirki	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Kuldeep S. Patil for the Applicant.
Mr. Rajan Salvi, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 20th AUGUST, 2018.

P.C.:-

This is a bail application filed by the aforesaid Applicant, who has been arrested in Crime No.27 of 2018 registered at Nhava-Sheva Police Station, District-Raigad for offences punishable under Section 376 of the IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. Heard Mr. K.S. Patil, the learned counsel for the Applicant and Mr. Rajan Salvi, the learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The case of the prosecution in brief is that on 18th or 19th March, 2018 the victim, daughter of the first informant, who was about 4 years of age had gone to the house of the Applicant. It is alleged that the Applicant had sexually abused her. The statement of the mother of the victim indicates that on 20th March, 2018 she had noticed blood stains as well as some white stains on the underwear of the victim. She also noticed blood and white discharge in her private parts. She informed this to the first informant. They took the victim to the Doctor and upon examination the Doctor told them that the victim had urinary infection.

4. The victim was complaining of pain hence on 25th March, 2018 they once again took her to the Doctor of JNPT Hospital. She had stated that Dr. Kelkar from the JNPT Hospital referred them to the Gynecologist. She claims that Dr. Manjusha examined the victim and told them that there was a hymenal tear and prescribed some medicines. Thereafter upon inquiry, her daughter told them that the Applicant herein had inserted his finger in her private parts.

5. The statement of the victim was recorded under Section 164 of the Cr.P.C. The victim, who was a four years old child has

stated that she had gone to the house of Nini, daughter of the Applicant to see her younger brother. She has stated that the father of Nini patted her back and thighs and that he pushed her. She has further stated that the Applicant had told her to remove her pants and that he had touched her private parts. She claims that the Applicant gave her an injection on the vagina and she had started bleeding. She claims that he had pressed her neck and threatened to cause her death in case she disclosed the incident to anybody.

6. The statement of Dr. Kelkar prima facie indicates that on 20th March, 2018 the father of the victim had brought her to the hospital and had stated that victim girl was complaining of itching on her private parts. He had prescribed medication to the victim. The parents of the victim once again came to the hospital on 28th March, 2018 and told him that there was no improvement and that the victim was still getting itching sensation in her private parts. He therefore, referred the victim to Dr. Manjusha.

7. The statement of Dr. Manjusha Nichat, who is a Gynecologist at J.N.P.T. Hospital, indicates that she had examined the victim on 28th March, 2018. The parents of the victim had told her that

she was having itching sensation on her private parts. She had examined the victim. She did not find any symptoms of vulvitis and had recommended that they should get her urine tested for urinary infection.

8. It is to be noted that the FIR proceeds on the basis that upon examining the victim, Dr. Manjusha had informed the first informant that there was hymenal tear. However, the statements of Dr. Prashant Kelkar and Dr. Manjusha do not indicate that they had informed the parents of the victim about hymenal tear. On the contrary, the statements of Dr. Prashant and Dr. Manjusha prima facie indicate that victim was taken to the hospital only with a complaint of itching on her private parts. Doctors had suspected urinary tract infection and had recommended medical test for the same. The statement of Dr. Manjusha also does not indicate that she had told the parents that there was hymenal tear. She had stated that there were no symptoms of vulvitis and that she had only asked the parents to get the urine tested for urinary tract infection. The medical reports also prima facie indicate that there was no vaginal injury and that the hymen was intact.

9. The medical evidence does not prima facie support the case of the prosecution. Considering the nature of the evidence and also considering the fact that the investigation is otherwise completed in all relevant aspects and the charge sheet is already filed, in my considered view presence of the Applicant is no longer required in custody.

10. Hence, the following order :

- (a) The bail application is allowed.
- (b) The Applicant is ordered to be released on bail on furnishing bail bonds of Rs.25,000/- with one or two solvent sureties in the like amount to the satisfaction of Ad-hoc Additional Sessions Judge-1, Raigad- Alibag.
- (c) The Applicant shall not interfere with the victim or the other witnesses in any manner.
- (d) The Applicant shall furnish his permanent as well as temporary address, if any and all his contact details to the Investigation Officer.
- (e) The Applicant shall not change his residential address without prior intimation to the concerned Court.

(SMT. ANUJA PRABHUDESSAI, J.)