

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

CRIMINAL BAIL APPLICATION NO.1919 OF 2018

Sushil Baburam Goswami	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Ms.Anjali Patil, Advocate for the Applicant.

Mr.Y.M. Nakhwa, APP for the Respondent – State.

Mr.Pushpak Ingale, API, Vile Parle Police Station, Mumbai,
present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 16, 2018.

P.C. :

This is an application for bail in connection with C.R. No.471 of 2017, registered with Vile Parle Police Station, Mumbai. The offences were registered under Section 376, 354 and 506 of Indian Penal Code (“IPC”, for short). First Information Report was lodged on 13th December, 2017. Applicant was arrested on 14th December, 2018.

2 The case of the prosecution is that the victim is 16 years old girl. She was taking tuition with the applicant. Class was attended by other students. It is alleged that one day the applicant had touched the complainant victim inappropriately. Thereafter, the accused was to call her in class and outrage her modesty. Somewhere in 2016, the victim was taken to a lodge at Marve and the accused had committed sexual intercourse with her. It is further alleged that the incident was again repeated on 1st November, 2017 at a lodge at Marve. The accused also promised that he would marry her. On 11th December, 2017, the accused again persuaded the victim to accompanying him to lodge, however she refused to do so, and, informed the same to her aunt. Thereafter FIR was lodged on 13th December, 2017.

3 Learned counsel for the applicant submitted that the relationship was consensual. Although the victim was 16 years old, there was an affair between the complainant/victim and the applicant. It is submitted that the applicant is aged about 28 years. The phone calls between the applicant and the complainant shows that they were in relationship. It is submitted that the FIR was lodged belatedly. The alleged incident had occurred somewhere in 2016, and, allegedly she had physical

relationship with the accused at the lodge at Marve. It is further submitted that in the history provided to the hospital, during the medical examination, the victim has stated that her uncle came to know about the cell phone messages between the complainant and the accused and she was advised to lodge complaint. Applicant is in custody from the date of arrest and further detention is not necessary.

4 Learned APP submitted that the victim was minor. The applicant is a married person. Assuming that the victim had consented for the physical relationship, her consent is immaterial as she is minor. The victim girl was aged about 16 years and the accused had taken undue advantage of situation and had sexually assaulted her. Accused is charged under Section 376 as well as for the offences under the POCSO Act.

5 Having heard both the sides. I have also gone through the documents on record. The complainant had alleged that the accused had initially committed acts amounting to outraging her modesty. Applicant was acquainted with her being the student who was attending the tuition classes. The time and period when the aforesaid incident had occurred has not been stated in the

FIR. It is further alleged that somewhere in 2016, the accused had committed sexual intercourse with her in a lodge at Marve, which is again repeated in November 2017, under the promise of marriage. Thus, the applicant and the accused were acquainted with each other from 2016 onwards and there was physical relationship in 2016 and November 2017. FIR was lodged on 13th December, 2017. From the medical history, it is apparent that the uncle of the complainant has advised to lodge complaint after noticing several messages in her cell phone. The victim was minor at the time of incident and aged about 16 years, however, considering the fact that the accused and the victim were acquainted with each other and there was apparent consensual physical relationship between them, and, also considering the fact that the investigation is completed and the charge - sheet is filed, case for grant of bail is made out.

6 Hence, I pass pass the following order:

:: ORDER ::

- (i) Bail Application No.1919 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.471 of 2017, registered

with Vile Parle Police Station, Mumbai, he may be released on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall not reside within the jurisdiction of Vile Parle (East) Police Station, Mumbai, till the conclusion of trial;
- (iv) Applicant shall not approach the complainant, victim or her family members and shall not threatened them;
- (v) Applicant shall furnish his residential address to the Investigating Officer, after being released on bail;
- (vi) Bail Application No.1919 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)