

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

BAIL APPLICATION NO.1950 OF 2018

Prasad @ Gundu Harishchandra
Toraskar

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. A.S. Khandeparkar with Mr. Rajdeep D. Gude I/b. M/s.
Khandeparkar and Associates for the Applicant.

Ms J.S. Lohokare, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 22nd OCTOBER, 2018.

P.C.:-

This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who has been arrested in C.R. No.17 of 2018 registered with Vengurla Police Station, District-Sindhudurg, for offences punishable under Sections 376, 377, 354 (b) and 506 of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Mr. Khandeparkar, the learned counsel for the Applicant submits that there is no prima facie material to show that the Applicant was involved in committing the alleged offence. He submits that the

medical report and the CA report do not support the case of the prosecution. The learned counsel for the Applicant further contends that the Applicant is in custody since 6.4.2018 and therefore, his presence is no longer required in custody.

3. Mrs. J.S. Lohokare, the learned APP for the Respondent-State submits that the victim is a child of 8 years old. Statement of the victim prima facie reveals that the Applicant herein had sexually abused her. She further contends that the medical evidence in fact supports the case of the prosecution. She submits that the offence is of serious nature and releasing the Applicant at this stage can hamper the trial.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The records reveal that the parents of the victim were working at Sangli/Satara. The victim was residing with her foster parents Supriya and Suryakant Naik. The first informant is the siter of Suryakant Naik. She had lodged the FIR alleging that on 1.4.2018 at about 3.30 p.m. she had sent the victim girl to a general store to get a

packet of Maggi. The first informant has stated that the victim girl came back crying. The victim disclosed that the Applicant herein, who was in the general store gave her two packets of maggi. She further stated that at the relevant time there was no other person in the said general store. The Applicant took the money and as she was returning home, the Applicant pulled her in the shop. He removed her clothes and had sexual intercourse with her. Based on the said information, the first informant lodged a FIR against the Applicant for sexually abusing and committing rape on the child of 8 years.

6. The statement of the victim prima facie reveals that she had gone to the general store for purchasing Maggi. She claims that the Applicant pulled her inside the shop and had sexual intercourse with her. The victim was referred to medical examination. The medical report prima facie reveals that there was swelling and redness on introitus. The Doctor has opined that possibility of sexual intercourse /assault cannot be ruled out.

7. It is to be mentioned that Section 29 of the POCSO raises a presumption as to certain offences. It provides that if a person is prosecuted for committing or abetting or attempting to commit any

offence under sections 3, 5, 7 and 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

8. In the instant case, the material on record prima facie reveals that the first informant had sent the victim, who was a minor girl about 8 years of age to the general store in the village. She had returned home crying and on being questioned, she had told the first informant that the Applicant had pulled her inside the store and removed her clothes and had sexual intercourse with her. Statement of the prosecutrix also prima facie reveals that the Applicant had sexually abused her. The fact that there was a swelling and redness over introitus also prima facie supports the case of the prosecution. The aforesaid material cannot be discarded on the basis of CA report.

9. The material on record prima facie indicates that the Applicant herein has sexually abused the girl, who was barely 8 years old. The offence is of serious nature. The gravity and seriousness of the offence does not justify grant of bail. Furthermore, the Applicant and the witnesses are from the same village. In the event of his release on bail, there is every possibility of the Applicant pressurising the victim and other witnesses. Thus, releasing the Applicant at this stage

will be prejudicial to a fair trial.

10. Hence, the application is dismissed. Suffice it to say that the above prima facie observations shall not be construed as an expression of opinion on the merits of the case.

(SMT. ANUJA PRABHUDESSAI, J.)