

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

CRIMINAL BAIL APPLICATION NO.2008 OF 2018

Ranjit Dattatray Patil

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Dilip Shinde i/b. Mr.S.K. Hande, Advocate for the Applicant.
Mr.R.M. Pethe, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 17, 2018.

P.C. :

This is an application for bail in connection with C.R.No.60 of 2018, registered with Koperkhairane Police Station, Navi Mumbai, for the offences punishable under Sections 366-A and 376 of Indian Penal Code ("IPC", for short) and under Sections 4, 8 and 12 of Protection of Children From Sexual Offences Act ("POCSO Act", for short).

2 The case of the prosecution is that the complainant is the student aged about 15 years and resident of Koperkhairane, Navi Mumbai. On 4th March, 2018, complainant along with two minor had gone to playground. At that time, her friend Priyanka Pandit met her. After some time, four other friends of Priyanka came with beer bottles and the juvenile offender forced

complainant to consume the liquor. It is further alleged that the complainant was under intoxication and started vomiting. She told Priyanka to drop her home. At that time, Priyanka called someone and one person came with a car. Complainant, Priyanka and the unknown person who came with the car left the place of incident. Thereafter, Priyanka got down from the car. Complainant was not in a conscious state of mind, and, she was insisting the unknown person, who was driving the car, to leave her at home and the unknown person gave her threats and took her to some place in bushes and sexually assaulted her. Complaint was lodged on 7th March, 2018. Subsequently, supplementary statement of the complainant was recorded on 10th March, 2018. In the said statement, it is stated that she had gone to the garden along with her friend Nisha. She was acquainted with one Manish Pawar. On 4th March, 2018, Manish Pawar called her near garden at about 7:30 p.m. They were chit-chatting till 11:30 p.m. Manish Pawar committed sexual intercourse with her three times on the same day. At about 1:00 a.m., Priyanka came there with her friends. Complainant informed her about the incident. Manish Pawar left the place. The friend of Priyanka, namely Raj came there with Maruti Suzuki car. He was accompanied by two persons. At that time, the other person who

had come with Raj got down from the car. Subsequently, the complainant sat in the car alongwith Raj and another person. At about 3:30 a.m., the car reached at Govandi station. Priyanka took an amount of Rs.2,000/- from Raj and left. Complainant threatened the inmates of the car. Thereafter, the said person, who was accompanying Raj and was sitting with the complainant in the car got down. Thereafter, the person who was driving the car dropped her at Koperkhairane at about 6:00 a.m. Statement of complainant was recorded under section 164 of Cr.P.C., in which she has stated that she was in unconscious state of mind. It is further stated that she had gone to Balaji garden along with four friends. She has consumed beer brought by her friend Priyanka. She was accompanied by two other friends. At about 11:30 p.m., three friends of Priyanka came there to drop the complainant and Priyanka at home. All of them sat in the vehicle. Priyanka got down near Govandi station, and, thereafter, two other persons also got down from car. She was under intoxication and could not understand what was happening. After reaching home, she realised that there was pain and bleeding. The persons sitting in the car had referred to other person as Raj.

3 Offences were registered, as under Section 376 of IPC. Statement of Rajesh Thakur was recorded on 15th March,

2018, in which he has stated that his name has been dragged into the case by Priyanka Pandit in the statement and he is not concerned with the case. The applicant preferred an application for bail before the Sessions Court, which was rejected on 25th June, 2018.

4 Learned counsel for the applicant submitted that there is no evidence to show the involvement of applicant in the crime. The person who was allegedly driving the vehicle is named as Raj. However, applicant has been not identified as Raj. No role of sexual assault has been attributed to Raj. There is variation in the statement of the complainant's first statement, supplementary statement and the statement recorded under Section 164 of Cr.P.C. Applicant is in custody from the date of arrest. Investigation is completed and charge-sheet is filed.

5 Learned APP submitted that applicant has been identified in the test identification parade. Considering the identification, it will have to be inferred that the person who had subjected the complainant to sexual assault is applicant.

6 I have perused the documents on record. The identification parade was conducted on 15th May, 2018. Applicant has been identified by the complainant. However, there is no

statement of the complainant after identification parade attributing the role played by the applicant in the crime. There is no cogent evidence to establish that the applicant is a person who had sexually assaulted the complainant. Statements of the complainant were recorded on three occasion, and, there is variation in the statements. Complainant was purportedly under intoxication, and, according to her, she was not in a position to disclose what has happened. It is not stated that the applicant has sexually assaulted the applicant. According to the complainant, as mentioned in the FIR, only one person came with car. In the subsequent statement she has referred to presence of the other persons. She has also stated that other persons has got down from the car. In the statement it is not specifically spelt out that Raj has sexually assaulted her. In any case, there is no evidence that the applicant who was the person who was driving the car or the person whose name is Raj or the person who was sexually assaulted the victim. According to the complainant, on the date of incident, she had physical relationship with Manish Pawar. Taking into consideration, the aforesaid circumstances, it is not necessary to further detain the applicant in custody. Investigation is completed and the charge-sheet has been filed and case for grant of bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2008 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.60 of 2018, registered with Koperkhairane Police Station, Navi Mumbai, on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iii) Applicant is directed to attend the Koperkhairane Police Station, Navi Mumbai, once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)