

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

CRIMINAL BAIL APPLICATION NO.2013 OF 2018

Bablu Pannalal Vishwakarma

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.S.V. Marwadi and Ms.Trupti Khamkar, Advocate for the Applicant.

Ms.A.A. Takalkar, APP for the Respondent – State.

Mr.Waghmare, PI, Samata Nagar Police Station, Mumbai, present.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 8, 2018.

P.C. :

Applicant is accused in C.R.No.14 of 2018, registered with Samta Nagar Police Station, Mumbai, under Sections 376 and 363 of Indian Penal Code and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, ("POCSO Act", for short). The applicant was arrested on 5th January, 2018. FIR was lodged by the mother of the victim.

2 Prosecution case is that the daughter of the first informant i.e. the victim aged about 15 years was studying in the

school situated in the area. Applicant is the neighbour of the complainant and hence he was acquainted with the victim. On 4th January, 2018 at about 11:30 p.m., the victim went to toilet. She was not accompanied by the complainant. Since the victim did not return home, complainant started searching her. Complainant went to the house of the applicant and found that even applicant was not in the house. The sister of the applicant informed the complainant that the applicant had come to their house with the victim. FIR was lodged on 5th January, 2018. It is further alleged that the victim had informed the complainant that under the pretext and taking the victim to the garden, the accused took her to his house and had physical relationship with her. Accused also gave her different gifts from time to time and kept physical relations with her. Investigation commenced. Statements of the complainant and the victim were recorded.

3 Applicant preferred an application for bail before the Special Court under the POCSO Act, which was rejected on 16th July, 2018.

4 Learned counsel for the applicant submitted that false case has been registered against the applicant at the

instance of the mother of the victim. There is no corroborative evidence to substantiate the charge under Section 376 of IPC. Medical evidence does not support the version of the complainant. It is further submitted that in the history given by the victim at the time of the medical examination, she has stated that there was no physical relationship between the applicant and the victim on 4th January, 2018. In the circumstances, bail may be granted to the applicant. Learned APP submitted that the victim was minor at the time of the incident. The consent, if any, is immaterial. In the history provided by the victim at the time of medical examination, she has referred to the incident of physical relationship between herself and the accused in the month of October and December.

5 On perusal of the FIR, it can be seen that the accused and the victim were acquainted with each other. FIR was lodged by the mother of the victim. According to the complainant, the victim had left the house for going to toilet at about 11:30 in the night and she did not return home. Complainant went to the house of the applicant accused and it was noticed that even he was not present in the house. The complaint refers to the acquaintance of the applicant and the victim. It is pertinent to

note that the statements of the victim child was recorded on 5th January, 2018, which is apparently copy paste from the statement of the complainant. The tenor of the statement reflected in the introductory paragraph gives an impression that it is the statement of the complainant herself, which shows complete non-application of mind and the casual approach of the police while recording the statement of the victim. It is also relevant to note that in the history provided by the victim it is stated that she knows the accused since last one year, and that the accused has confessed his liking of her. It is also stated that there was consensual relationship between them in October and December 2017. On 4th January, 2018, the victim had a fight with her mother and hence she left the house and met the accused. It is also stated that the accused took the victim to her aunt's place, which was locked, and, hence, she was taken to her sister's home at Nalasopara. After the complaint was lodged, accused and the victim were brought from Nalasopara. She has also stated that there was no forcible sexual intercourse. Report also indicate that there was no history of physical torture or of use of intoxicants and no history of intercourse on the night of 4th January, 2018.

6 The victim was apparently minor at the time of incident. However, as per her statement, when she left the house on 4th January, 2018, there was no physical relationship with the accused. She had made reference to the incident of past. Apparently, it is also seen that both of them were acquainted with each other and the victim herself stated that the relationship was consensual. Taking into consideration all the aforesaid aspects, and also considering the fact that the investigation is completed and the charge - sheet is filed, case for grant of bail is made out.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2013 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.14 of 2018, registered with Samta Nagar Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall report Samta Nagar Police Station, Mumbai, on first Saturday of every month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) Applicant shall not tamper with the evidence;
- (v) Applicant shall attend the trial Court during the hearing of the case, unless exempted by the Court for some reason;
- (vi) Applicant is permitted to furnish cash surety of Rs.25,000/- in lieu of surety for a period of four weeks
- (vii) Bail Application No.2013 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)