

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

BAIL APPLICATION NO. 2024 OF 2018

Hipolitus Santana Dsouza

... Applicant

Vs.

The State of Maharashtra

... Respondent

...

Mr.Satish Maneshinde I/b Ms. Anadini Fernandas for the applicant.

Mr. M.G.Patil, APP for the Respondent-State.

Mr. Anil Jaykar, API, Kurla P.S.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 21st AUGUST, 2018.

P.C.

1. This is an application for bail. The offence is registered vide C.R.No. 248 of 2018 with Kurla Police Station on 26th May, 2018.

The offences were registered under Section 363 of Indian Penal Code as well as Section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that the victim is about 16 years boy. The complaint was lodged by his father on 26th May, 2018. The applicant is acquainted with the family of the victim. The accused took the victim alongwith him on 07th May, 2018 to Goa. The victim returned from Goa on 12th May, 2018. During

the said period accused had sexually assaulted the victim. The statement of the victim was recorded under Section 164 of Code of Criminal Procedure. It is alleged that the accused had sexually assaulted him in Goa.

3. On completing the investigation, chargesheet is filed and the case is pending before the Special Court. During the course of investigation the statement of the victim, the complainant and the mother of the victim as well as other persons were recorded. The applicant preferred applications for bail before the Sessions Court, which were rejected before and after filing of chargesheet. While rejecting the application the court has observed that Section 363 of Indian Penal Code may not be attracted.

4. Learned counsel for the applicant submits that false case has been registered against the applicant. The applicant is aged about 63 years. He has no criminal antecedent. There is delay in lodging the complaint. The victim had returned from Goa on 12th May, 2018, however, the FIR was registered on 26th May, 2018. It is further submitted that the documents on record clearly indicate that it was to the knowledge of the family of the victim that the victim had accompanied with accused to Goa. Learned counsel drew my attention to the statement of the mother of the victim as

well as text message exchanged by the mother of the victim with the applicant as well as CDR between the victim and his family members during the period of alleged sexual assault. Learned counsel also pointed out the medical evidence and submitted that it does not corroborate the allegations levelled by the victim against the applicant. It is submitted that applicant is in custody since date of arrest I.e 27th May, 2018. Since the chargesheet has been filed his further custody is not required.

5. Learned APP relied upon the statement of victim under Section 164 of Code of Criminal Procedure. It is submitted that the statement attribute overt act to the applicant having sexually assaulted the victim. It is submitted that the provisions of POCSO Act are attracted in this case and considering the nature of offence, bail may not be granted to the applicant.

6. I have perused the documents on record. Apparently, the First Information Report was lodged on 26th May, 2018. The alleged incident had occurred between 7th May, 2018 to 9th May, 2018. The victim returned to Mumbai on 12th May, 2018. Learned counsel for the applicant had also contended that there are several relatives of the victim in the Goa. However, he had not complained about the sexual assault. I have also perused the

medical evidence on record and also perused the whatsapp messages, screenshots of call logs, and Airlines tickets. The statement of the victim's mother also indicate that she was aware the victim was visiting Goa alongwith the accused-applicant.

7. Taking into consideration over all aspects of the matter and also considering the fact that offences under POCSO which are levelled against the applicant provided punishment of imprisonment for five years, the application for bail can be considered on certain conditions. It is not appropriate to analyse the evidence and evaluate further on the merits of the case as the trial is pending in the Court. Considering the overall circumstances as stated herein above, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i) Criminal bail application No. 2024 of 2018 is allowed.
- ii) The applicant is directed to be released on bail in connection with Special Case No. 390 of 2018 arising out of C.R. No.248 of 2018 registered with Kurla Police Station on furnishing PR Bond of Rs.25,000/- (Rs. Twenty Five Thousand) with one or more sureties in the like amount;
- iii) The applicant is permitted to furnish cash security in the sum

of Rs.25,000/- (Rs. Twenty Five Thousand) for a period of four weeks from the date of release;

iii) The applicant shall report Kurla Police Station once in a month on first Saturday between 10 a.m. to 12 noon.

iv) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

v) The application stands disposed off.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.08.24
16:19:11 +0530

(PRAKASH D. NAIK, J.)