

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

BAIL APPLICATION NO.2027 OF 2018

Sahil Mukesh Badal

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....
Mr.Pandit Kasar, Advocate for the Applicant.
Mr.Arfa Sait, APP for the Respondent - State.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 28, 2018.

P.C. :

Applicant is arrested on 8th April, 2018, in connection with C.R.No.208 of 2018, registered with Ghatkopar Police Station, Mumbai, for the offence punishable under Section 376 of Indian Penal Code ("IPC", for short) and Sections 4, 8 and 12 of Protection of Children From Sexual Offences Act, 2012 ("POCSO", for short).

2 Prosecution case is that the victim is a minor girl aged about 14 years. On 7th April, 2018, between 12:00 noon to 1:00 p.m., the victim was playing in the vicinity in her house. The accused caught hold of her hand, gagged her mouth and forcibly took her inside the house. Accused then committed sexual

intercourse with her. Since the door was knocked by someone, the victim was asked to wear the clothes and was allowed to go. Accused also asked her whether she would come on the next day. But, the victim was frightened, started crying. She informed her aunt that the accused had committed wrong act with her. On the same day at about 10:00 in the night when she had gone to the public toilet, she informed her aunt that the accused had committed wrong with her. On 8th April, 2018, the victim met her aunt and at that time she narrated the incident to her and hence the FIR was lodged by the aunt of the victim on 8th April, 2018.

3 Learned counsel for the applicant submitted that the version of the victim is not corroborated by any independent evidence. The medical evidence does not support the case of the complainant. Report does not show any injury to the victim. It is further submitted that the Chemical Analyser's report also does not support the prosecution case. He also pointed out the case papers of KEM Hospital where the history given by the accused is recorded wherein it is stated that the accused had committed the sexual intercourse with her consent on 7th April, 2018. He further submitted that taking the version of the complainant and the victim as it is, according to her, she was asked to leave when

someone knocked the door which also reflect that the act was consensual. It is submitted that doubt is created with regards to the case of the prosecution. The applicant has no criminal antecedent and he is in custody from the date of arrest.

4 Learned APP submitted that the victim was minor and aged about 14 years. She had disclosed the incident to her aunt. There is no reason for her to falsely implicate the applicant. She has narrated the incident in her statement. Victim has attributed specific overtact to the applicant which amounts to offence under Section 376 of IPC and offence under the POCSO Act. It is further submitted that the victim was a minor at the time of incident and assuming there was a consent, it is immaterial. The accused has sexually assaulted the victim and no case for grant of bail is made out.

5 Having gone to through the charge - sheet, which has been annexed to this application, it can be seen that the incident had occurred on 7th April, 2018 between 12:00 noon to 1:00 in the afternoon. The version of the victim has been narrated hereinabove. Victim had disclosed the actual incident to her aunt on the next day. During the course of hearing, it is also noted that

the clothes of the victim were seized by the police on 12th April, 2018. The clothes of the accused were also seized on the same day. It is not clear as to why the clothes were not seized immediately after the incident. The Chemical Analayser's report with regards to the examination of the clothes of the victim indicate that there was no blood nor semen was detected on the clothes. The medical case papers of the Department of Forensic Medical and Toxicology, Mumbai indicate that the history was given by the accused that it was a consensual act. He had also stated that he did not take bath after the incident and he did not change the clothes. Thus, at the time of examination of the accused, he had neither taken bath nor changed his clothes. The medical examination of the victim is also part of the charge - sheet. Having perused the said documents, there is no indication that there was any forceful sexual intercourse. Trial Court would deal with the prosecution case at the appropriate stage while appreciating the evidence. However, in the facts and circumstances of the case as narrated hereinabove, there is no need to continue his detention. He is in custody from the date of his arrest and on completing investigation charge - sheet is filed. Applicant is aged about 18 years and there are no criminal antecedents against him.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2027 of 2018, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.208 of 2018, registered with Ghatkopar Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (ii) Applicant shall attend Ghatkopar Police Station, Mumbai once in a Month on first Friday of the month between 10:00 a.m. to 12:00 noon, till further order;
- (iii) Applicant shall not tamper with the evidence;
- (iv) Applicant shall not approach the victim or her family members and shall stay away from her;

(v) Bail Application No.2027 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)