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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2062 OF 2018

Abbu Khaslid Niyaz Ahmed Shaikh ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Ms.Anjali Patil for the applicant

Mrs.A.A.Takalkar, APP for the respondent.

CORAM: PRAKASH D. NAIK, J.

DATE : OCTOBER 3, 2018

P.C.:-

This is an application for bail. The applicant is arrested in C.R.No.246/2017 registered with Shivaji Nagar police station for offences registered under section 376 of the Indian Penal Code and under sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POSCO' for short). The applicant was arrested on July 2, 2017,

2. It is the case of the prosecution that on July 1, 2017

first information report was lodged by Vakil Ahmed Khan. It was alleged that he is residing at Govandi since last 20 years. He knows a woman residing in the said area, namely Yasmin Khan and her 9 year old daughter Sumaira. He also knows a person by name Khalid Niyaz Ahmed Shaikh, who is doing the work as a courier in the said area and residing near the house of complainant's cousin brother. On June 24, 2017 the complainant's daughter Sumaira informed his wife that few days before the Ramzan, a person residing next to house of Kamal uncle had called her in his house and showed her video of nude men and women on his mobile. She informed that fact to her sister Umeira who abused the said person and told him that he would inform about the same to his wife. The victim Sumaira further informed that few days ago, the same person had also flashed his private part to her. The complainant's wife then informed about the incident to another women, who in turn apprised about the incident to the wife of applicant. On 24th June, 2017, when the complainant and his wife were at home, the women, namely Shabnam Bano came to their house and informed that she came to know about the aforesaid incident. She also stated that her

husband had not committed such an act and in the event if it is found that he is involved in such incident, complaint can be lodged with the police station after Idd festival. On July 1, 2017 the wife of the complainant informed about the incident to the brother of the complainant. Shabnam Bano met them along with other women and stated that her husband had not committed such act. At the same time, woman namely Yasmeen came there and stated that four months ago her daughter was playing near her house and at that time Khalid called her in the house with promise of giving Rs.20/- and after she went into the house, he showed her obscene video and attempted to put his private parts into the private part of the victim, hence she started crying. Subsequently, a complaint was lodged and the offence as stated above was registered.

3. The learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. He has nothing to do with the alleged offence. The complaint was lodged belatedly. The mobile phone of the applicant was seized by the police. There is nothing to indicate that there was obscene video. The daughter of the complainant has not disclosed the name of the

applicant and the date of the incident. She has also not given the description of the accused and there was no identification parade. The other victim has also not disclosed the actual date, month and the year of the incident and she did not disclose the name of the applicant. The statements of the victim recorded under sections 161 and 164 of the Code of Criminal Procedure are contradictory to each other. In the said statement there is no allegation of sexual assault amounting to offence under Section 376 of the IPC. As per the medical report of the victim, there is nothing to suggest that the alleged incident had occurred. There is no eye witness stating that the victim girl was seen visiting the house of the accused. The delay in lodging the F.I.R. is not explained. The applicant has been falsely implicated on account of quarrel between the wife of the complainant and wife of the applicant as well as wife of the brother-in-law of the complainant. The applicant is in custody from the date of his arrest. The investigation is completed and charge-sheet is filed.

4. The learned APP submitted that the victim is a minor girl. There is consistency in the statement of the victim with regard to the act committed by the accused. There is sufficient evidence

to show that the applicant is involved in the crime. The statement of the witnesses corroborates the prosecution case. The applicant has committed a serious crime.

5. I have perused the charge-sheet. The complainant has recited the incident depicting the act committed by the applicant-accused. There is sufficient evidence to show that the applicant is involved in the said crime. The contents in the F.I.R., statement of the victim girl clearly establishes the involvement of the applicant. The applicant is attributed with a serious charge of outraging the modesty and even penetration. The applicant is charged with an offence punishable under section 376 of the IPC and offence under POSCO Act. There is consistency in the statement of the victim. The contradictions pointed out by the learned counsel for the applicant will not absolve him with the charge against him. The statement of Salimuddin Chaudhari indicates that he heard shouts from the house of the applicant-accused. Hence the witness and other persons knocked the door of his house. At that time, Sumaira, aged about 9 years was in the house. The applicant opened the door. The victim was found wearing Salwar and pyjama was lying aside. The victim informed that the accused gave

Rs.20/- to her and she was brought to his house. He showed obscene video and thereafter, he removed her clothes and tried to insert his private part in the private part of the victim. Due to same, she started shouting. The statement of Ajimul Rehman also reiterates the statement of the above witness. The applicant has allegedly committed the alleged act against the victim girl. Considering the nature of evidence, no case for grant of bail is made out.

ORDER

The Criminal Bail Application No.2062 of 2018 is rejected.

(PRAKASH D. NAIK, J.)