

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

CRIMINAL BAIL APPLICATION NO. 2107 OF 2018

Mr. Sandeep Suresh Patil

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. Vinod Kashid, Advocate for the Applicant.

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

(Mr. Kuldeep Vasant More, PSI, Bhiwandi Police Station, is present)

CORAM : PRAKASH D. NAIK, J.

DATE : OCTOBER 09, 2018.

PC :

1 This is an application for grant of bail in connection with C.R. No. I-416 of 2017 registered with Bhiwandi City Police Station on 18.12.2017 for offences under sections 376, 506 of IPC r/w. Sections 3, 4, and 12 of the POSCO Act, 2012. The applicant was arrested on 18.12.2017.

2 The complaint was lodged on the basis of the statement of the victim, who was minor at the time of lodging of first information report. It is alleged that the victim was residing with her parents at Bhiwandi, where she secured admission in the school for 9th standard. Accused no. 1 used

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to chase her and pass comments on her and hence, she had disclosed the said incident to her grand-mother and father, who, therefore, sent her back to Mumbai for further education.

3 In November, 2017, the accused no. 1 met her near her school at Bhiwandi and asked her to meet on Sunday. Thereafter, he made calls on her cell-phone and called her to Mangal Bhavan at Bhiwandi. The victim then sat in an Auto-rickshaw with accused no.1 and proceeded to Anjur Fata. The accused no. 1 took her in the room of one building and committed sexual intercourse with her and threatened her not to disclose the incident to any one. Thereafter, the accused no. 1 again met her near her school and took her to another room and committed similar acts with her. The accused no. 2, (applicant) was acquainted with the father of the victim, as they were residing at Ghungaat Nagar, where the accused no.2 (the applicant) used to visit her house. The accused no. 2 saw the victim girl and accused no.1 sitting in Auto-rickshaw and clicked their photographs and started blackmailing the victim for having physical relationship with her. He took her to undisclosed place and committed sexual intercourse with her by threatening her that he would disclose her affair with accused no. 1 to her parents. Since the victim was suffering from pain, the incident was disclosed by her to her parents and thereafter, the FIR was lodged on 18.12.2017.

3 The present applicant was arrested on 18.12.2017. During the course of investigation, the statement of the victim was recorded under section 164 of Criminal Procedure Code. The statements of other witnesses were also recorded and after completion of investigation, chargesheet is filed.

4 Learned Advocate for the applicant- accused no.2 submitted that the applicant has been falsely implicated in the case. The first information report itself indicate that the applicant no. 2 had seen the victim and accused no.1 together in the Auto-rickshaw. Apprehending that the applicant-accused no. 2 may disclose the incident to her parents, he has been implicated in the crime. The victim was apparently acquainted with accused no.1 and volunteered to accompany accused no. 1 to go at the place where they had physical relations. The victim had also admitted that she was acquainted with accused no.1. It is submitted that the applicant -accused no. 2 was implicated in crime without mentioning time and place of the alleged incidents. Even the period during which the incident has occurred is not disclosed in the complaint, which makes it clear that the FIR is false and fabricated. It is submitted that although the complainant did not disclose the spot of alleged incident, the statements of the parents of the complainant/victim were recorded by the police and in the said statements they have referred to the place - Vishal Lodge, as a place where the alleged incident of

the sexual assault by the present applicant had occurred. It is submitted that the panchanama relating to the place of the incident, at the instance of the victim, was recorded subsequent to the statements of the parents of the victim and therefore, it is not clear as to how they were aware about the spot of the incident. This shows that the case against the present applicant has been concocted with a view to prevent him in disclosing the alleged crime. It is also submitted that there is no corroborative evidence in the form of CDR to indicate that the applicant was present at the relevant time at the scene of the offence. It is submitted that the victim has also stated that the applicant had physical relationship with her on two occasions. Assuming that these allegations are true, it is difficult to believe that she was forced to do the said acts. It is further submitted that the medical evidence does not support the case of the prosecution. The co-accused has been released on bail as he was a juvenile. It is further submitted that the investigation is complete and the chargesheet has been filed.

5 Learned APP relied upon the medical evidence and the statement of the victim recorded under section 164 of the Cr.P.C. It is submitted that the victim was minor at the time of the incident and, assuming that the act was voluntary, the consent is immaterial. It is submitted that there is no reason for the victim to falsely implicate the applicant in

the alleged crime. Specific role has been attributed to the applicant and the case for grant of bail is not made out.

6 I have gone through the chargesheet. The complainant-victim, as stated above, has not mentioned date and place of the incident where she was sexually assaulted by applicant. Primary role of repeated sexual assaults was attributed to accused no.1 with whom she was acquainted. The complainant has stated that the applicant had seen her alongwith accused no.1 and has thus allegedly tried to blackmail her by clicking her photographs with accused no.1. If victim was not a consenting party to the relationship with accused no. 1, there was no question of any apprehension for her that the applicant would disclose her parents that she was seen in the company of the accused no.1. The medical evidence indicate that there was no external injury on the person of victim when medical examination of the victim was conducted. The other accused is on bail. There is discrepancy with regard to the place of the incident vis-a-vis the statement of the parents of the victim and spot panchanama recorded at the instance of the victim. Apparently, the statements of the persons from the Vishal Lodge has not been recorded during the course of investigation. Investigation is complete and the chargesheet is filed. There are no antecedents against applicant.

7 Taking into consideration totality of the circumstances, as narrated above, the case for grant of bail is made out. Hence, I pass following order :

ORDER

- i. The bail application no. 2107 of 2018 is allowed.
- ii. The applicant be released on bail in connection with the C.R.No. I-416 of 2017, registered with Bhiwandi City Police Station, on furnishing P.R. Bond in the sum of Rs. 20,000/- with one or more sureties in the like amount.
- iii. The applicant shall report the concerned police station once in a month, on the first Saturday of every month, between 10 to 12 pm till further orders by the court.
- iv. The applicant shall attend the trial court during the course of hearing till the conclusion of the trial, unless exempted by trial court.
- v. The applicant shall not tamper any evidence or shall not try to approach the victim during the period of trial.

The bail application is disposed of in the above terms.

(PRAKASH D. NAIK, J.)

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