

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

BAIL APPLICATION NO. 2141 OF 2018

Bilal Abdulrajjak Patel

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Harihar Bhav I/by Bhav and Company for the applicant.

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

...

CORAM : PRAKASH D. NAIK, J.

DATE : 15th OCTOBER, 2018.

P.C.

1. This is an application for bail in CR No. I-13 of 2017 registered with Koparkhairane Police Station for offence punishable under Sections 376, 354, 323, 506 of Indian Penal Code and Sections 4, 8 and 9(N) of POCSO Act. The applicant was arrested on 18th January, 2017.

2. The brief facts of the prosecution case is that the complainant is working as a waitress. She came in contact with applicant/accused about two years ago and they fell in love with each other. Since she was lonely and was abandoned by her family, she developed the relationship with accused. The complainant and accused started residing together in live-in-

relationship alongwith daughter at Parvarti Apartment, Sector 19, Koparkhairane. Thereafter, accused took a flat on rent at Prabhu Ramchandra Niwas, Sector 19, Koparkhairne where they resided alongwith victim. The accused was addicted to drugs and used to assault the complainant and his daughter. They were fed up with him and attempt was made to commit suicide on 20th June, 2016 by consuming Kala Hit insecticides. However, they did not file any complaint against the accused. About 16 days prior to Diwali in 2016, the complainant left for her job leaving behind her minor daugther Riya aged 11 years in the house. Taking advantage of the situation, the accused committed rape on her daughter and also touched her inappropriately. The victim had informed the incident to the complainant. Accused further threatened them. Subsequently on 10th January, 2017, the accused were arrested in another case. Hence, the complainant developed courage to lodge the present complaint on 12th January, 2017. Investigation is completed and chargesheet has been filed.

3. Learned advocate for the applicant submitted that false case has been lodged against the applicant. The complainant and the applicant were admittedly in relationship. They have stayed together. Residential premises were provided by the applicant to

the complainant and the victim. First Information Report was lodged belatedly. Medical evidence does not corroborate the version of the complainant and the victim. The complainant and the victim had given contradictory version which show that the complaint is false and frivolous. The history provided to the medical officer at the time of medical examination also contradicts the statement of the victim and the complainant. It is further submitted that in other case relating to the offence under NDPS Act, the applicant was arrested on 10th January, 2017 vide order dated 12th June, 2018, this Court had granted bail to the applicant. It is further submitted that the investigation is completed and the chargesheet has been filed and further detention of the applicant is not necessary. Learned counsel for the applicant drew my attention to the contents of the First Information Report, the statement of the victim, medical history, statement of the complainant recorded during the investigation conducted by the police for an offence under NDPS Act wherein the applicant was implicated as accused and the agreement in respect to the premises wherein the applicant, complainant and victim were resided and the medical case papers with regards to the examination of the victim.

4. Learned APP submitted that complainant and the victim are illiterate person and on account of illiteracy there are contradictions in their version. They were under the fear of the applicant/accused and hence could not lodge the complaint at the earlier point of time. FIR was lodged after the applicant was arrested in another case. Victim was minor at the time of incident. Statement of the victim and the complainant attributes overt act amounting to the offence under Section 376 of Indian Penal Code as well as provisions of POCSO Act. Applicant was also involved in another case registered under the NDPS Act. Thus, there is sufficient evidence to show involvement of the applicant therefore, bail application may be rejected.

5. I have gone through the chargesheet. Perused the documents which are annexed to the application. First Information Report was lodged on 12th January, 2017. The complainant is a women aged about 30 years and she was in relationship with the applicant. The complainant and the victim were residing with the applicant, there is no complaint with regards to the earlier attempt made for committing suicide by consuming insecticides. As per the First Information Report the alleged incident of sexual assault had occurred somewhere in

October, 2016. The exact date of the incident has not been mentioned in the First Information Report. However, it is stated that the incident had occurred 15 days prior to Diwali in 2016. The complaint alleges rape and act amounting to outraging the modesty to the victim child. The FIR was lodged subsequently on 12th January, 2017. The statement of the complainant recorded during the course of investigation in NDPS case is annexed to this application. In the said statement dated 13th January, 2017, the complainant has given a different version with regards to the sexual harassment of the victim. It is stated that incident had occurred during the Diwali in the year 2015 and the accused had shown some obscene video to the victim and sexually assaulted her. It is not mentioned specifically that victim was raped. The period of incident mentioned therein is also contradictory to her version of the complaint. The nature of allegations also differ from the complaint. The statement of the victim was recorded on 12th January, 2017 whereas she has referred to the act of touching her inappropriately by the accused and also referred to sexual assault. In the statement it is not specifically stated whether there was incident of sexual intercourse. I have also perused the medical case papers. After examining the victim, the observations

are made in the said report. The medical examination of the victim does not show any injuries qua the version of the complainant and the victim. The history recorded in the medical case papers indicate that victim was sexually assaulted by vaginal intercourse one month back two times one week apart. The agreement of leave and licence is also annexed to this application. The said agreement was executed on 11th September, 2016. It was executed between the applicant and the vendor of the premises. The complainant, victim and the applicant had resided at the said premises. The period of said agreement of leave and licence is from 11th September, 2016 to 10th August, 2017 which indicate that the applicant, victim and complainant were residing of said premises during the said period. In the light of the aforesaid circumstances and considering the fact that the investigation is completed and the chargesheet is filed, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i) Criminal Bail Application No. 2141 of 2018 is allowed;
- ii) Applicant is directed to be released on bail in connection with I-13 of 2017 registered with Koparkhairane Police Station on

furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount;

iii) Applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks;

iv) Applicant shall not reside within the jurisdiction of Koparkhairane Police Station and shall not approach the complainant and victim during the trial;

v) Applicant shall furnish particulars of address of the place where he would reside after being released on bail to the Investigating Officer;

vi) Applicant shall attend the trial court on the date of hearing of the case unless exempted by the Court;

vii) The application stands disposed off.

Digitally
signed by
Sachidanand
Kuttan Nair
Date:
2018.10.20
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(PRAKASH D. NAIK, J.)