

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

CRIMINAL BAIL APPLICATION NO.2441 OF 2018

Gopi Sone Lal Giri @
Sikandra Sone Lal Giri

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Ms.Rushita Jain, Advocate for the Applicant.

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

PSI Surekha Ahire, Tilak Nagar Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 11, 2018.

P.C. :

Applicant is seeking bail in connection with C.R.No.142 of 2018, registered with Tilak Nagar Police Station, Mumbai. The offences were registered under Section 354(A) of Indian Penal Code (“IPC”, for short) and Sections 8, 10 and 12 of the Protection of Children from Sexual Offences Act (“POCSO Act”, for short). Applicant was arrested on 18th April, 2018.

2 Prosecution case is that the complainant is the mother of victim, who was aged about 14 years. There are no

toilets in the chawl where the complainant and victim resides. Applicant works at a public toilet, which is in the vicinity of the victim's residence, and, hence, victim and his family were using the said toilet. On 18th April, 2018, the victim went to the toilet. He reached the said place. While making the payment to the applicant, applicant pulled the victim towards him. He then touched the victim in rear portion of his body and moved his hand around his back. He also made victim touch his private part. The victim then narrated the incident to his mother. Subsequently, FIR was lodged with concerned police station on 18th April, 2018.

3 Learned counsel for the applicant submitted that the applicant is in custody from the date of arrest. The allegation made by the victim and the complainant is that the accused had touched the victim inappropriately. Offence under Section 354-A of IPC is bailable in nature. It is further submitted that Section 8 of the POCSO Act provides punishment upto five years. Section 10 relates to aggravated sexual assault, which shall be punishable with punishment, which may extend to 7 years. However, the said provision is not attracted in the present case, as there is no evidence of aggravated sexual assault.

4 It is further submitted that the applicant is in custody from the date of arrest and on completion of investigation, charge-sheet is filed.

5 Learned APP submitted that the victim is a 14 year old boy. Applicant has committed the acts as alleged in the FIR and the statements recorded under Section 161 and 164 of Cr.P.C. He submitted that while rejecting the application for bail, Special Court has considered the said aspects. The Sessions Court while rejecting the application for bail has stated that the accused has inserted finger in the anus of the victim. It is submitted that the statement of the victim recorded under Section 164 of Cr.P.C. was in a sealed condition. It is submitted that the victim has specifically attributed overtact to the applicant, and, hence, application be rejected.

6 Perused the statement of victim recorded under Section 161 of Cr.P.C. as well as the statement of the complainant who is the mother of the victim. The victim has alleged that the accused had touched him inappropriately and the other acts, as stated in the statement of the victim. It appears that in the medical history given by the victim to the doctor, it was stated

that the accused had inserted his finger in his anus. There is no reference to such allegations in the statement recorded under Section 161 of Cr.P.C., and, apparently, it is contradictory to the version of the victim in the earlier statement. Applicant is in custody from the date of arrest. Investigation is completed and charge - sheet is filed. There are no criminal antecedents against the applicant. In the circumstances, case for grant of bail is made out.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2441 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.142 of 2018, registered with Tilak Nagar Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report the Tilak Nagar Police Station, Mumbai, every month on first Saturday

of the Month between 10:00 a.m. to 12:00 noon,
till further orders;

- (iv) Applicant shall not tamper with the evidence and shall not approach the victim or his family members;
- (v) Applicant shall attend the trial Court on the date of hearing, unless exempted by the Court for some reasons;
- (vi) Bail Application Nos.2441 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)