

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

CRI. BAIL APPLICATION NO.2482 OF 2018

Nabil Mohd. Rafiq Khan
(At present in Arthur Road Central Prison) .. Applicant
Vs.
State of Maharashtra .. Respondent

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Ms.Anjali Patil, Advocate for the Applicant.
Mr.M.G. Patil, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 4, 2018.

P.C. :

Applicant is seeking bail in connection with C.R. No.397 of 2018, registered with Ghatkopar Police Station, Mumbai, for the offences punishable under Sections 363, 366-A and 376 of the Indian Penal Code (“IPC”, for short) and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (“POCSO Act”, for short).

2 FIR was lodged on 3rd July, 2018. It is alleged that the victim girl is studying in 9th standard. On 2nd July, 2018, the victim did not attend the school. She also did not return home. Search

was carried out, but, she could not be traced. Hence, complaint was lodged under Section 363 of IPC. Subsequently, the victim child was traced. Her statement was recorded on 6th July, 2018. In her statement, it is stated that on 2nd July, 2018, she had gone to the vegetable market where she met accused who told her to accompany him to Ajmer. She was reluctant to accompany him. However, accused threatened her that he would commit suicide. He took her to Bandra station and from there to Ajmer, by railway. They stayed at a place near Darga on 4th July, 2018 and 5th July, 2018. During the said period, the accused had sexual intercourse with her without her consent. Applicant was arrested on 6th July, 2018. Statements of various persons were recorded and charge - sheet is filed.

3 Learned counsel for the applicant submitted that there was an affair between the applicant and the victim. Taking the prosecution case as it is, it is apparent that she had volunteered to accompany the complainant to Ajmer and they had stayed together. It is further submitted that the evidence does not support the case of sexual assault. It is submitted that the statement of the witnesses and the circumstances put forth by the prosecution establishes that the applicant and the victim were

acquainted with each other, and, there was an affair between them. The victim has resiled from her consent and at the instance of the complainant has alleged that the applicant has committed sexual assault.

4 Learned APP submitted that the statement of the victim child supports the prosecution case. Her statement is also recorded under Section 164 of Criminal Procedure Code, which also corroborates her version. The accused is charged with an offence under Section 376 of IPC. The victim was minor at the time of incident. The accused induced her to accompany him at Ajmer and had sexually assaulted her.

5 I have perused the documents on record. The statement of victim recorded on 6th July, 2018, indicate that she had accompanied the accused to Ajmer, they had stayed together in the room premises at Ajmer for two days. It is also noted that the statement of witness Chandrapal Walmiki indicate that the applicant was with the victim on the earlier occasion and they were indulging in indecent act. Statement of another witness Dinesh Goswami also refers to victim accompanying the applicant and another person at the hotel where they were not admitted for

want of Aadhar Card. Statements of other witnesses indicate that there was relationship between the victim and the applicant. The history given by the victim during the medical examination mentions that she was in relationship with the accused. The medical evidence also suffers from discrepancies. Taking into consideration the factual aspects and the circumstances, as stated hereinabove, the case for grant of bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2482 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.397 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;
- (iii) Applicant shall report Ghatkopar Police Station, Mumbai on first Saturday of every Month between 10:00 a.m. to 12:00 noon, till further orders;

- (iv) Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses;
- (v) Bail Application No.2482 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)