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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 2571 OF 2018**

Azmat Azim Shaikh

....Applicant

Vs.

The State of Maharashtra

....Respondent

Mr. Vishal Krishna Advocate for the applicant
Mrs. G. P. Mulekar APP for the State.

CORAM : PRAKASH D. NAIK, J.**DATED : 21st DECEMBER, 2018****P.C.**

This is an application for bail in crime no. 17 of 2018 registered with Dindoshi Police Station for offence punishable under sections, 285, 338, 307 r/w section 34 of Indian Penal Code and section 7 & 8 of the Protection of Children from Sexual Offences Act (POCSO Act) 2012. Applicant was arrested on 12/01/018. Investigation is completed and charge-sheet is filed on 10/04/2018.

2 The prosecution case is that on 28/12/2017, the victim aged

about 14 years went to see shooting of film along with his friend. While he was passing through film city road, he noticed that his friends Safiq, Ajmad, Lala & Sonu were bonfiring on footpath and consuming some intoxicants. They called the complainant. Accused were inhaling some intoxicants in a piece of cloth and they told the complainant to do the same. Safiq made the complainant stand and out of fun pulled his pant, as a result of which the pant got fire. The victim/complainant started running away and extinguished the fire by using water from the nearby water tank. Accused ran away from the spot. The victim intimated the incident to his mother. The victim lodged the complaint narrating the aforesaid facts on 03/01/2018 and the F.I.R. lodged on 06/01/2018 against Safiq, Ajmad, Lala & Sonu. Thereafter, statement of victim's mother was recorded in which she has narrated the facts intimated to her by the complainant/victim. Subsequent statement of victim's mother was recorded on 11/01/2018. In the said statement, different narration was given. It was stated that on 28/12/2017, victim had left the house and at about 8.30 p.m., accused was sitting on the street and enjoying bonfire. They called the victim. He was taken to a jeep

which was parked near the place of incident. They insisted that the victim should inhale intoxicant which was covered in a piece of cloth. Accused Safiq & Lala started touching his private part. Victim started running from the said place. At that time, Lala threw petrol on his person. Safiq also did the same acct and also lighted the matchstick and threw at the victim. Victim tried to extinguish the fire and ran away from the place of incidence. Subsequent statement of victim was recorded. He has narrated the incident which is different from his narration in the F.I.R. In the said statement which was recorded on 12/01/2018, he stated that Ajmad and Safiq threw petrol on his person and Safiq also lighted matchstick on him, as a result of which, pant got fire and he started running from the place of incidence.

3 Applicant had preferred an application for bail before the Sessions Court which has been rejected. Statement of friend of the victim was recorded on 23/01/2018. In the said statement it was stated that petrol was thrown on the person of the victim by Jaifulla @ Lala. It is also stated that Safiq had also poured petrol on his

person and lighted matchstick. In the said statement, no overt act, pouring petrol on the person of the victim is attributed to the applicant. Said witness was purportedly accompanying the victim at the time of incident.

4 From the contents of the aforesaid statements, it is apparent that there are different versions with regard to overt act attributed to the applicant. The friend of the victim is a star witness who has not stated that the applicant was involved in throwing petrol on the person of the victim. Complaint of the victim also does not attribute any role to applicant having thrown petrol on the victim. First statement of the complainant is also inconsonance with F.I.R. Subsequent statement of the complainant, however, implicates the applicant having poured petrol on the person of the victim.

5 The learned APP submitted that the victim was 14 years old boy, as a result of which there may be contradictions in his version. It is further submitted that presence of the applicant is referred at the scene of offence by all the witnesses. Accused had acted in

connivance with each other. It is therefore submitted that the application be rejected.

6 As stated above, F.I.R. does not attribute any overt act of pouring kerosene by the applicant or any other person. First statement of the complainant's mother also reiterates what is mentioned in the F.I.R. Subsequently, there is change in version wherein the role is attributed to the applicant by the victim in subsequent statement, however it is pertinent to note that the star witness to the incident who is the friend of the victim has not stated that the applicant is a person who has poured kerosene on the victim and lighted the matchstick. Investigation is completed and charge-sheet is filed. Hence, I pass following order.

ORDER

- (I) Bail Application no. 2571 of 2018 is allowed.
- (II) Applicant be released on bail in crime no. 17 of 2018 registered with Dindoshi Police Station on furnishing P. R.

bond in the sum of Rs. 20,000/- with one or more sureties in the like amount. Applicant is permitted to furnish cash security in the sum of Rs. 20,000/- for a period of 6 weeks.

(III) Applicant shall report to the concerned police station once in a month on first Saturday of a month between 11.00 am to 01.00 p.m. till further orders.

(IV) Applicant shall not enter the jurisdiction of Dindoshi Police Station except for attending the police station and proceedings in the Court.

(V) Applicant shall give the residential address to Investigating Officer, after he is released on bail.

7 Application stands disposed of.

[PRAKASH D. NAIK, J.]