

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

CRIMINAL BAIL APPLICATION NO.2670 OF 2018

Naveen S/o. Kirsan Sarsar	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Ashok M. Saraogi, Advocate for the Applicant.
Mr.R.M. Pethe, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 13, 2018.

P.C. :

This is an application for bail. The applicant is arrested on 28th October, 2016, in connection with C.R.No.808 of 2016, registered with Dindoshi Police Station, Mumbai. Initially offence was registered under Section 363 of Indian Penal Code (“IPC”, for short) and, subsequently, the charge under Sections 376, 376(D) read with 34 of IPC and Section 4 of the Protection of Children From Sexual Offence Act (“POCSO Act”, for short), were added.

2 The prosecution case is that on 21st October, 2016, the daughter of the complainant aged about 16 years left the

house alongwith her aunt to go to the shop, but, did not return. On search she was not found in the vicinity. Hence, the complainant believed that the victim must have been kidnapped by unknown person, hence, lodged complaint on 23rd October, 2016. Further, statement of the complainant was recorded on 28th October, 2018, wherein it was stated that daughter of the complainant was traced by her on 25th October, 2016 at Marve bridge, Malad, Mumbai, and she brought her home. Thereafter, complainant made inquiries with her as to who had taken her from 21st October, 2016, and where she was from that day onwards. Victim told her that she was acquainted with a rickshaw driver Rahul Gechand, who is residing in the same area, with whom she had friendship. Victim further disclosed that four months ago Rahul Gechand had taken her to the garden by rickshaw for eating Chinese bhel, and, thrice he had committed sexual intercourse with her. It is further stated that eight days thereafter Rahul took her to his residence and he and his friends Nitin Sarsar and Navin Sarsar committed sexual intercourse with her and threatened her not to disclose the incident to anyone. On 21st October, 2016, the victim was taken through rickshaw by Rahul Gechand and his friends Bobby Gussor and Vijay Gussor to Marve beach and they had committed sexual intercourse from 21st

October, 2016 to 25th October, 2016. Statement of victim was recorded on 28th October, 2016. In the said statement, she stated that four months ago Rahul Gechand had committed sexual intercourse with her. Again he took her to his residence and he along with his friends committed sexual intercourse. She also disclosed alleged incident dated 21st October, 2016. Subsequent statement of complainant was recorded on 14th November, 2016, in which it is stated that the victim was medically examined and it was revealed that she is carrying pregnancy of 11 weeks. It is alleged that victim is having psychiatric disorder.

3 Learned counsel for the applicant submitted that the applicant had been falsely implicated in this case. It is further submitted that DNA report was received by the investigating machinery, and as far as the applicant is concerned, the same is negative. The DNA profile obtained from Exhibit-1, from the scene of offence i.e. blood of Nitin Kirsan Sarsar is not identical and not from one and same source of male origin. Learned counsel for the applicant submitted that the complainant is habitually lodging the complaints with Dindoshi Police Station. Learned counsel for the applicant submitted that the complainant has lodged FIR's alleging sexual assault on the victim, vide

C.R.Nos.534 of 2017 and 657 of 2017 and 623 of 2018 with same police station. It is submitted that the case of the complainant is apparently false and frivolous. The applicant is in custody since last two years. It is submitted that from the facts, it is a matter of record that it is claimed that on the date of lodging the complaint, the victim was found to be pregnant. Within a period of two days, it cannot be said that victim is carrying pregnancy of 11 weeks.

4 Learned APP submitted that the complainant and the victim has attributed overtact to the applicant. The applicant alleged to have sexually asaulted the victim.

5 I have perused the documents on record. Four cases were registered by the complainant with same police station, alleging that the victim was sexually assaulted. This FIR registerd vice C.R.No.808 of 2016 was lodged on 23rd October,2016. The incidents had allegedly occurred in July 2016, and 21st to 25th October, 2016. C.R.No.534 of 2017, was similarly lodged under Section 363 of IPC, and, subsequently, Section 376 and 34 of IPC were added. It was alleged that on 15th July, 2017, victim left the house and did not return. Complaint was lodged on 16th July, 2017. C.R.No.657 of 2017, was lodged on 2nd October,2017. The

victim wa allegedly sexually assaulted on 28th September, 2017 and 29th September, 2017. This Court granted bail to two persons who were arrested in connection with C.R.No.657 of 2017. The complainant in the said FIR has also initiated complaint under Section 363 of IPC and, subsequently, the accused therein were pointed out as a person who were committed the sexual intercourse. Said FIR was lodged on 2nd October, 2017, which is subsequent to the registration of the present FIR. While granting bail to the accused in the aforesaid case, it was observed that there is variation in the statement of the victim, and, it was alleged by the complainant that the complainant is suffering from mental illness. C.R.No.623 of 2018 was registered in a similar circumstance at the instance of the complainant alleging that her daughter was sexually assaulted. On perusal of the present FIR, it is apparent that at the time of lodging of FIR, the victim was pregnant for a period of about 11 weeks. It is also pertinent to note that the DNA Report, which is received recently indicates that DNA profile obtained from ex.1 condom found at scene of crime and DNA profile obtained from ex.2 blood of Navin Kirsan Sarsar in F.S.L.ML.Case No.DNA-2025/16 is not identical and not from one and same source of male origin. There is no other evidence to show that victim was found in company with

applicant. Except statement, there is no other corroborative evidence. At the time of medical examination of the victim, history was recorded stating that girl gives history that she went along with colony friend Rahul on 21st October,2016, to his house and than followed by that with guys friends to Aksa Beach, where she was raped by Rahul and his college friends, names not known and she was left at Aksa Beach. Thus, in medical history, there is no reference to incident in the house of Gechand and no name of applicant was referred. Taking into consideration, the overall circumstances and the factual matrix and also considering the fact that the applicant is in custody from last more than two years, case for grant of bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2670 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.808 of 2016, registered with Dindoshi Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.10,000/-, with one or more sureties in the like amount;

- (iii) Applicant is directed to attend Dindoshi Police Station, Mumbai, once in a 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;
- (v) Applicant is permitted to furnish cash security in the sum of Rs.10,000/-, in lieu of surety, for a period of six weeks from today;
- (vi) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)