

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

CRIMINAL BAIL APPLICATION NO. 2886 OF 2018

Ramji Surajprasad Gupta

... Applicant

Vs.

The State of Maharashtra

... Respondent

...

Mr. Aabad Ponda I/by Y.R.J. Legal for the applicant.

Mr. R.M. Pethe, APP for the Respondent-State.

Mr. Dawane, PSI, Samata Nagar Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th NOVEMBER, 2018.

P.C.

1. This is an application for bail in C.R. No. 408 of 2018 registered with Samta Nagar Police Station for the offence punishable under Sections 354(A) and 509 of Indian Penal Code and Sections 4, 8 and 12 of POCSO Act. The applicant was arrested on 6th June, 2018.

2. The case of the prosecution is that on 6th June, 2018 the victim girl had visited the grocery shop viz Suraj Grain Stores for purchasing rice. She reached the shop at about 1.30 p.m and placed the order of half kilogram rice. She handed over currency note of Rs.20 towards the payment for the purchase of rice which slipped from her hand. While she was lifting the note,

accused/applicant zipped his pant and took out his private part and told her to hold the same. She was frightened and left the place. She went home and thereafter on the same day complaint was lodged with the police station.

3. Learned counsel for the applicant submitted that there is no physical assault. The offence under Section 354-A and 509 of Indian Penal Code are bailable in nature. It is further submitted that prosecution has applied the provision of Sections, 4, 8 and 12 of the POCSO Act. Section 4 of POCSO Act related to the penetrative sexual assault. Section 8 of POCSO Act provides to punishment for sexual assault and Section 12 of POCSO Act provides punishment for sexual harassment. The definition of sexual assault is stipulated in Section 12 of the POCSO Act. It is submitted that Section 7 of POCSO Act stipulates that there has to be touch with sexual intent. It is submitted that case of the prosecution is that accused has uttered the word and therefore Section 8 of the POCSO Act would not be applicable and at the most Section 12 of the POCSO Act is applicable. It is submitted that punishment provided for Section 12 of POCSO Act is upto three years. Applicant is in custody from 6th June, 2018. Investigation is completed and chargesheet has been filed.

4. Learned APP submitted that specific overt act has been attributed to the applicant. Victim is the minor girl aged about 10 years. Incident had occurred in the afternoon at about 1.30 p.m. when the victim visited the shop of the accused for purchasing rice. The complaint was lodged immediately on the same day and there is no reason to disbelieve the version of the complainant.

5. I have perused the First Information Report and the statement of the victim recorded under Section 164 of the Code of Criminal Procedure. Admittedly, there is no physical touch. Considering the version of the complainant and the submission advanced by the learned counsel for the applicant, the applicability of provision of Sections 4 and 8 is debatable. The applicant is in custody since 6th June, 2018. The punishment provided under Section 12 of POCSO Act is upto three years. Investigation is completed and chargesheet has been filed. In the circumstances, case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No. 408 of 2018 registered with Samta Nagar Police

Station, Mumbai on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- iii. Applicant shall not tamper with evidence;
- iv. Applicant shall not approach the victim directly or indirectly and shall not enter into the vicinity of the residence of the complainant;
- v. Applicant shall report the concerned police station once in a month on First Saturday between 10 a.m. to 12 noon till the conclusion of the trial;
- vi. Applicant shall attend the dates of hearing before the Trial Court, unless exempted by Court;
- vii. The observation made in this order is for considering grant of bail and the trial Court shall deal with the case in accordance with law;
- viii. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)