

Sarnobat

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

BAIL APPLICATION NO. 2841 OF 2017

Kiran Chandrakant Ovhal.	.. Applicant.
Vs.	
The State of Maharashtra.	.. Respondent

Mr. Suryakant Joshi, Advocate for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent/State.

CORAM : P. N. DESHMUKH, J.

DATE : 27TH FEBRUARY, 2018.

P. C. :

1. This is an application filed for grant of bail by applicant Kiran Ovhal who is involved in Crime No. 402 of 2016 registered at Dattawadi Police Station under Section 376(2)(i), 323 of Indian Penal Code and Section 4 of the Protection of Children From Sexual Offences Act. Learned counsel for the applicant by referring to statement of one Dhanashri Puranik, the Social worker, working for Daksha Cell who has recorded statement of prosecutrix had submitted that no name of applicant is stated by prosecutrix as she has referred to one "Dada" who had removed her clothes and had touched her inappropriately at her private part. Learned counsel has therefore, submitted that there is no involvement of applicant established by the

prosecutrix. There is no name of applicant mentioned on the day of incident. The learned counsel has therefore, submitted that if prosecutrix has implicated applicant in her statement recorded under section 164 Cr. P. C. on 26th December, 2016, then it cannot be given weight, as it is after thought and has submitted that application be allowed on this count alone.

2. Learned Additional Public Prosecutor opposed the application by referring that there is sufficient evidence against the applicant and therefore, by referring above statements and medical report application be rejected.

3. On the background of submissions advanced as aforesaid, it is noted that applicant is not referred in the statement of prosecutrix dated 10th October, 2016 as in reply to question No. 5 prosecutrix stated that after she was offered Maggi, Dada called her inside the house and after closing the door, he removed her inner ware and inappropriately touched her private part. Though prosecutrix has not named applicant as aforesaid in her statement recorded under section 164 Cr. P.C., she has named applicant as "Kiran Dada" to have touched her inappropriately after removed her inner ware.

4. Statement of mother of prosecutrix established that prosecutrix having sustained injuries to her private part and had also noted blood stains on her thigh to whom on inquiry, prosecutrix

disclosed name of applicant to have inserted finger in her private part.

5. In view of statement of prosecutrix coupled with statement of her mother as aforesaid, contents of medical report further corroborated said evidence, their involvement of applicant is clearly stated by mother of prosecutrix who has also named the applicant while giving history to the medical officer.

Similarly, the medical officer in clear term had opined that though there is no evidence of penetrative assault, there is definite opinion given of possibility of fingering in private part.

6. In view of above available evidence, applicant cannot be said to be entitled bail. More particularly when he is residing in the same locality where the prosecutrix is residing and the prosecutrix is minor aged Six years old. Application is therefore, rejected.

[P. N. DESHMUKH , J.]