

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3040 OF 2018

Jagannath Bansaram Saroj, Age 40 years, Occ.Hawker, R/o.Galli No.21, Ashok Nagar, Tagore Nagar, Vikhroli (East), Mumbai-83 (Presently lodged at Mumbai Central Prison)	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Ravi Dwivedi for applicant.
Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd December 2018

PC :

1. The applicant is seeking bail in connection with CR No.158 of 2018 registered with Vikroli Police Station for offence u/s 377 of Indian Penal Code and Sections 4 and 6 of Protection of Children from Sexual Offences Act. The applicant was arrested on 9th July 2018.

2. The prosecution case is that the boy who is aged about 16 years, was missing from 5th May 2018. On 6th May 2018 the complainant received a call from one person who told him to speak to the victim. The complainant spoke to his son (victim) wherein he stated that he was kidnapped by some person from Vikroli and he is at Bhusaval. The complainant went to Bhusaval by train and reached Bhusaval Railway Station. The complainant inquired with the victim as to what had happened and at that time the victim told him that on 5th May 2018 when he was proceeding from the road at about 7 pm,

three persons who were wearing mask came in Innova car and the driver of the said vehicle made inquiries with the victim. They used some spray on the face of the victim due to which he became unconscious and he was taken in the car. When he regained consciousness he was in nude condition. The complaint was lodged on 7th May 2018. On 10th May 2018 the informant made further inquiries with the victim as he had received call from RPF, Bhusaval stating that CCTV footage shows that the victim got down from Kushinagar Express. The complainant then questioned the victim to disclose the truth and subsequently statement of the victim was recorded on 11th May 2018 wherein he alleged that he was subjected to unnatural offence by person who prepares Samosa in his vicinity on 28th March 2018. Subsequently the applicant was arrested on 9th July 2018. Investigation is completed and charge sheet is filed.

3. From the statements recorded during the course of investigation it is apparent that there is variation in the statements of victim. In the earlier statement there was no reference of he being subjected to unnatural offence by a person from the vicinity. Initially he gave a story of kidnapping by persons who had covered their faces in innova car. The alleged incident is of 28th March 2018 and for the first time the alleged involvement of the applicant was disclosed on 11th May 2018. The accused was described to be the person preparing the Samosa in the vicinity, however, he was not named by the victim. Learned APP submitted that the accused was apprehended by the father of victim at the instance of victim and then handed over to police, whereas, in the statement of the victim's father recorded on 9th July 2018, it is stated that the accused was apprehended by police and was shown to the complainant at the

police station. There is discrepancy with regards to the identity of the applicant as a person who is involved in the crime. Learned APP submitted that the victim was of tender age and due to fear of his father had given different versions. However, the applicant's involvement is disclosed during the course of investigation. It is also pertinent to note that the medical examination of the victim shows that there is tenderness whereas final opinion indicated that he may be victim of sexual violence. It is pertinent to note that there are contradictory versions of the victim. Although the incident had occurred on 28th March 2018, the same was not disclosed at the earlier point of time and it was for the first time the alleged involvement of the applicant-accused was disclosed on 11th July 2018. There are no antecedents against the applicant-accused. In view of the above, case for grant of bail is made out.

4. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3040 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.158 of 2018 registered with Vikroli Police Station, Mumbai, on furnishing PR bond in the sum of Rs.20,000/- with one or more local sureties in the like amount;
- (iii) The applicant shall report the Vikroli Police Station once in a month on every first Saturday between 10 am and 12 noon till further orders;
- (iv) The applicant shall not tamper with the evidence and shall not meet the victim and his family;

(v) The applicant is permitted to furnish cash security in the sum of Rs.20,000/- for a period of four weeks.

(PRAKASH D. NAIK, J.)

MST