

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

CRIMINAL BAIL APPLICATION NO.3048 OF 2018

Arafat Neem Bauddin

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.P.A. Pol a/w. Mr.S.S. Suryavanshi and Mr.Ranjit Hatkar i/b.
M/s.Pol Legal Juris, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent - State.

Mr.J.A. Shaikh, API, Bhiwandi City Police Station, District -
Thane, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 13, 2018.

P.C. :

This is an application for bail in connection with C.R.No.I-45 of 2018, registered with Bhiwandi City Police Station, District-Thane, for the offences punishable under Sections 376, 376(2)(i)(j)(n), 376(D), 354(A), 363 and 504 read with 34 of Indian Penal Code ("IPC", for short) and Sections 4, 6 and 8 of Protection of Children From Sexual Offences Act ("POCSO Act", for short). First Information Report ("FIR", for short), was lodged on 10th February, 2018. Applicant was arrested on 12th February, 2018.

2 The case of the prosecution is that the complainant has two daughters. They are attending sewing classes at Bhiwandi. On 9th February, 2018, both of them went to join/attend classes. Since they did not return home, the complainant tried to search them and since they could not be traced, complaint was lodged on 10th February, 2018 under Section 363 of IPC. Subsequently, the victims were traced. Their statements were recorded on 11th February, 2018. It is alleged by them that on 9th February, 2018, they were called by one Pappu near Moon Light Hotel. They were taken ATKT mall at Thane. They went to the Mall. Thereafter, at about 12:00 hrs., they went to open garden and left the said place at about 12:30 hrs. At about 2:00 hrs., the said person Pappu took both victims to Bhiwandi Naka, and, threatened that they should meet him in the morning near Shivaji statue at Kalyan. Both of them went to Kalyan and stayed there in the whole night. On the next date at about 6:00 to 7:00 a.m., Pappu gave them call and informed them to reach at particular place. At about 8:30 a.m., they went to the said place. They were taken to Metro Lodge by the said Pappu, and, thereafter, their uncle came there and they were brought home. One of the victims has stated that one month prior to the aforesaid incident, one boy named Sameer was continuously telephoning her and causing

harassment to her. He was calling her near his school. She also stated that something wrong was committed by accused Sameer. It was also stated that Pappu and Sameer had threatened her and they have committed objectionable act. The victim has further alleged that the applicant, Sameer and Pappu had threatened her. Similarly, statement of other victim recorded on 11th February, 2018, refers to the fact that she had visited the mobile shop of the applicant and at that time she came across the person named Sameer, who was sitting in the shop. It was further alleged that the co-accused has sexually assaulted her. In both the statements of the victim, no overtact or sexual assault is attributed to the applicant. It is the prosecution case that the mobile shop of the applicant was used for committing the alleged acts by the co-accused.

3 Learned counsel for the applicant submitted that the offence punishable under Section 376 of IPC, cannot be attributed to the applicant. The statements of victim does not attribute any overtact or sexual assault to the victim except the allegations that the premises viz. the mobile shop of the applicant was used by the co-accused for committing the alleged acts and that the applicant had threatened the victim. No role is attributed to the

applicant. Learned APP submitted that the applicant has acted in connivance with co-accused and in committing the crime. Applicant has also indulged in threatening the victim.

4 As stated above, the role which has been attributed to the applicant is of aiding the co-accused as well as threatening the victim. The offence under Section 376 of IPC is attributed to the other accused who has been arrested and is in custody. It is also pertinent to note that the applicant is in custody since the date of arrest and investigation is completed and charge-sheet has been filed, further detention of the applicant is not required and the case for grant of bail is made out.

5 Hence, I pass the following order:

:: ORDER ::

(i) Criminal Bail Application No.3048 of 2018 is allowed;

(ii) The applicant be released in connection with C.R.No.I-45 of 2018, registered with Bhiwandi City Police Station, District-Thane on bail on

his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall report Bhiwandi City Police Station, District-Thane twice in a month on second and fourth Saturday of the month 10:00 a.m. to 12:00 noon;
- (iv) Applicant shall attend the trial Court on the date of hearing regularly, unless exempted by the Court;
- (v) Applicant shall not tamper with the evidence;
- (vi) Criminal Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)