

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

CRIMINAL BAIL APPLICATION NO.3099 OF 2018

Ashish Ramakrishna Rai	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Niranjan S. Mundargi i/b. Kunal Ambulkar, Advocate for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent – State.

Mr.Ranshevare, PI, Samta Nagar Police

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 18, 2018.

P.C. :

This is an application for bail under Section 439 of Code of Criminal Procedure. Applicant is arrested on 23rd July, 2018, in connection with C.R.No.494 of 2018, registered with Samta Nagar Police Station, Mumbai, for the offence punishable under Section 354 of Indian Penal Code (“IPC”, for short) and Sections 8 and 12 of Protection of Children From Sexual Offence Act (“POSCO Act”, for short).

2 The case of the prosecution is that the daughter of

the complainant who is aged about two years was attending Euro Kids Play School, located at Lokhandwala, Kandivali (East), Mumbai. On 6th July, 2018, when the first informant along with victim came home from the school, the victim was found disturbed and complained of pain. On 7th July, 2018, the victim was taken to Dr.Sattam, who examined her and gave some medicines. On 12th July, 2018, when the complainant was dropping the victim to school, she was reluctant to go to school. On 16th July,2018, the victim was taken to Dr.Sahu, who also examined her. On 17th July,2018 to 20th July, 2018, the victim was taken to school although she was reluctant. On 22nd July, 2018, the complainant and her husband made inquiries with the victim girl who stated that one day one uncle from the school had touched and pressed her urinal spot. On 23rd July, 2018, according to the complainant she went to the school, took the photo of the applicant and she showed it to the victim girl alongwith the photo of four other unknown persons and the victim pointed out the photo of the applicant as the person who had committed the said act. First Information Report ("FIR", for short) was lodged on 23rd July, 2018. Statements of witnesses were recorded. Applicant was arrested. On completing investigation, charge – sheet is filed.

3 Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. There is no authentic evidence to establish the identity of the applicant – accused as the person who had allegedly committed the said act. There is no identification parade. There is no corroborative evidence to show the complicity of the applicant in the crime. There are no statement of witnesses indicating the involvement of the applicant in the crime. Prosecution is relying on the purported identification conducted by the complainant on her own on the basis of photographs which were shown allegedly to the victim. The photographs does not form part of the charge-sheet. The investigating machinery has not conducted any process of identification. The applicant is in custody from 23rd July, 2018. The investigation is completed and the charge – sheet has been filed. It is further submitted that there are no other complaints against applicant from any other person. The case appears to out of misunderstanding. The victim was examined by doctors on the complaints of pain as stated by the victim. The Doctor's after examination, provided her medicines. Subsequently, on 23rd July, 2018, as spelt out in the FIR/ir, the victim had allegedly disclosed the incident of assault by one uncle from the school, as stated in the FIR by.

3 Learned APP submitted that the victim is aged about two years. There is no reason to disbelieve the version of the victim and the complainant. According to the first informant, the victim had identified the photograph of the applicant as the person who is involved in the alleged act. The statement of victim was recorded under Section 161 of Cr.P.C., wherein also she has referred the act committed by the accused. She has also stated that she had showed the person wearing spectacle to her mother.

4 I have perused the documents on record. The date of the incident is not reflected. The victim had initially complained of pain, and, therefore, according to the complainant, she was taken to the Doctor, and provided some medicines. The victim had complained about the pain on 6th July, 2018. Subsequently, the complainant had made inquiries with the victim on 22nd July, 2018. The victim had purportedly narrated the incident, as stated in the fir. Thereafter, on the next day, the complaint was lodged. According to the complainant, she went to the school and clicked photo of the person who was sitting on the receptionist counter, who was wearing spectacle. It is further stated that she has collected photo of other unknown persons and then pointed out

all the photos to the victim, in which she had allegedly identified the photographs of the applicant, as a person who has committed the crime. There was no process of any identification parade. The alleged photographs collected by the complainant does not form part of the charge - sheet. Although, DVR/CCTV Footage was collected, during the course of investigation, it is not disclosed whether the applicant is found to have committed the alleged act on the date of incident. There are no other incriminating circumstances, showing the involvement of the applicant in the crime. Applicant is in custody from the date of arrest. Investigation has been completed and charge - sheet has been filed. To avoid any tampering of evidence, conditions can be imposed while granting bail to the applicant.

6 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.3099 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.494 of 2018, registered with Samta Nagar Police Station, Mumbai,

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

- (iii) Applicant is directed to attend the Samta Nagar Police Station, Mumbai, Mumbai, once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) Applicant shall not visit the place of incident i.e. Euro Kids Play School, Lokhandwala, Kandivali (East), Mumbai, till conclusion of the trial and shall not tamper with the prosecution evidence;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)