

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

CRIMINAL BAIL APPLICATION NO. 2913 OF 2019

Akshay Sanjay Kawade

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Dilip Bodake, Advocate for the Applicant.

Smt. G.P. Mulekar, APP for the state-respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th November, 2019

PC :

1. This is an application for Bail in connection with C.R. No. 102 of 2019 registered with Koregaon Police Station, District Satara for offence punishable under Sections 376 (AB), (F), (M), (N) of Indian Penal Code and Sections 3(a),(d), 4 & 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO').

2. The First Investigation Report (for Short 'FIR') was lodged on 19th April 2019 by the mother of victim. It is alleged that, 15 days prior to lodging of complaint the complainant was informed by her minor son that the victim had told him to remove his cloths and she committed indecent act. Hence, he asked victim as to why she behaved like that. The victim told her brother that the

applicant/accused had subjected her to sexual assault. The complainant further stated that she made inquiries with the victim. The victim told her that the accused had sexually abused her since 2017. The abuse continued till six months prior to the lodging of First Investigation Report. The complainant was also informed that the accused used to penetrate in the private part of the victim. The statement of victim was recorded under Section 161 as well as Section 164 of Cr.PC. She was medically examined. The applicant was arrested on 19th April 2019.

3. Learned counsel for the applicant submitted that on account of enmity between the family of the applicant and victim, false case has been registered against the applicant. It is further submitted that the FIR has been lodged belatedly. Although the alleged incident had occurred from 2017 onwards; the victim had not disclosed the same to any family members. It is further submitted that there is contradiction between the statement of victim, brother of the victim and the complainant. The victim do not state that there was any penetration where as the complainant has stated that victim has stated so to her. It is submitted that the applicant's mother had purchased the property which was adjacent to the property purchased by the father of the victim. He relied upon the sale deed in respect to the said transaction. The father of the victim was

interested in having the property purchased by the applicants' mother. It is further submitted that although the incident was narrated to the complainant 15 days ago the FIR was lodged on 19-4-2019. It is submitted that the medical evidence is silent with regards to any injury sustained by the victim due to alleged sexual assault.

4. Learned APP submitted that, the victim was a minor aged about 6 years and 11 months. She had narrated the incident to the complainant. The incident came to light on account of her behavior with her brother who informed the said incident to the complainant. The victim was subjected to sexual abuse since 2017. there is sufficient evidence against the applicant having committed the offences.

5. I have perused the charge-sheet. The complainant has stated that she inquired with the victim after her son disclosed her about her behavior. The complainant has alleged that there was sexual intercourse. The statement of the victim under Section 161 & Section 164 of Cr.P.C. do not support the said fact. The victim do not refer to penetration. The statement of the brother of the victim is also contrary to the version of the complainant. The FIR mentioned that the victim was abused from 2017, till 6 months prior to the lodging

of FIR. The complaint mentioned that 15 days prior to the lodging of FIR the incident was disclosed to the complainant & other family members. However, complaint was lodged after 15 days. The victim had not disclosed the incident to any family member since 2017. Considering the period during which the victim was sexually assaulted as stated by complainant. There would have been injuries on the body of the victim. The medical case paper of the victim states that there are no injuries on the genitals of the victim and there are no injuries on her body. The investigation is completed and charge-sheet is filed. Considering aforesaid circumstances, case for grant of bail is made out. Hence order as follows :

ORDER

- i) Bail Application No. 2913 of 2019 is allowed.
- ii) The applicant is directed to be released on bail in connection with C.R. No. 102 of 2019 registered with Koregaon Police Station, District Satara on his furnishing PR. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- iii) The applicant shall not approach the victim or her family members.
- iv) Applicant shall stay out of jurisdiction of Village Peth Kinhai till conclusion of the trial.

- v) The applicant shall report the concerned Police Station, once in a month on every first Saturday of the month between 10:00 a.m. to 12:00 p.m. till further order.
- vi) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)