

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

CRIMINAL BAIL APPLICATION NO. 122 OF 2019

Amitkumar Narendra Mahanto ... Applicant

Versus

State of Maharashtra ... Respondent

Ms. Sanjana Pardeshi for Applicant.

Mr. N. B. Patil, APP for Respondent – State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 12, 2019.

P.C. :

. The Applicant is seeking regular bail in Crime No. 31 of 2017 for an offence punishable under Sections 377, 363 & 366-A of the Indian Penal Code and Sections 4, 6, 8 & 10 of the Protection of Children from Sexual Offences Act (for short, 'POCSO Act' for the sake of brevity). For the incident of 1st February 2017 the Applicant came to be arrested on 2nd February 2017 and chargesheeted.

2. The learned APP on instruction submits that the trial in the special case has already commenced and two of the witnesses are examined.

3. The prosecution case is, the Applicant is cousin maternal uncle of victim girl and under the pretext of giving chocolate has committed sexual offence punishable under the Indian Penal Code and Protection of Children from Sexual Offences Act.

4. The learned Counsel for Applicant submits that apart from the fact that the victim girl was removed from the custody of mother without her consent, the necessary ingredients of Section 363 i.e. kidnapping, 366-A i.e. procurement of child i.e. minor girl and Sections 4, 6, 8 and 10 of POCSO Act are not satisfied.

5. The learned Counsel then would invite attention of this Court to certain alleged serious contradiction which could be noticed in the investigation carried out. According to the learned Counsel, the Applicant is behind the bars for last more than two years and as such he is entitled to be released on bail.

6. The learned Counsel has drawn attention of this Court to the Judgment of the Apex Court in the matter of ***Sunil K. Sinha V/s State of Bihar***¹ and the order of this Court passed in Criminal Bail Application No. 18 of 2019 (Dashrath Balu Kesarkar V/s State of Maharashtra) decided on

1 (1998) 5 Supreme Court Cases 607

7th January 2019. The learned Counsel submits that considering the length of punishment provided under the Sections charged, the Applicant against whom there are no criminal antecedents is entitled to be released.

7. The learned APP submits that apart from the medical evidence, there are statement of the eye-witnesses which speaks of the victim girl being taken away by the Applicant. Ossification test, recovery of jewelery on the spot of incident is sufficient enough to infer *prima facie* involvement of the Applicant. As such, rejection of bail is sought.

8. Having considered rival submission, what is noticed is, the medical evidence brought on record speaks of the happening of the incident in question and as such, at the relevant time the Applicant being custodian of the child as could be inferred from the statement of the witnesses, can be held to be *prima facie* involved in the crime in question.

9. Apart from above, it is brought to the notice of this Court that trial in the matter had already commenced as the evidence of two witnesses is recorded. The learned APP also submits that the relatives of the Applicant have threatened the family members of the victim girl during the course of trial.

10. Apart from above, the other evidence including that of medical evidence *prima facie* concludes that the alleged offence had taken place, as such, in my opinion, on facts no case for grant of bail is made out.

11. As far as the Judgment in the matter of **Sunil Sinha** (*cited supra*) is concerned, the Accused therein were facing trial in Bihar Fodder Scam. The maximum punishment provided in the case in hand is life imprisonment. That being so, the said Judgment which is on the fundamental rights of the Accused persons, particularly guaranteed at Article 21 of the Constitution of India will be of hardly assistance to the facts of the case in hand.

12. The order of this Court *referred to* in the matter of Dasharath Kesarkar will also be of hardly any assistance as in the said case ingredients of Sections 3 and 4 of the POCSO Act were not satisfied whereas in the case in hand from the investigation carried out till date it could be inferred that the ingredients of Sections 3 and 4 of the POCSO Act are very much satisfied. That being so, I hardly see any reason which impress upon this Court to grant bail.

13. As such, Bail Application fails. Hence same stands rejected.
14. Since the learned Counsel for Applicant is appointed by this Court, she will be entitled for the expenses and the professional charges as are fixed under the Schedule of the Maharashtra State Legal Services Authority of this Court. This Court appreciates the assistance rendered to this Court by the learned Counsel for Applicant.
15. The Deputy Director, Forensic Science Laboratory, Nashik is directed to produce the Chemical Analyzer's Report before the Special Court, if not already produced, within a period of four weeks from today.
16. It shall be the responsibility of the learned APP and the Investigating Officer to bring the present order to the notice of Deputy Director, Forensic Science Laboratory, Nashik for its compliance.

(NITIN W. SAMBRE, J.)