

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

CRIMINAL BAIL APPLICATION NO. 209 OF 2019

Chandrakant Vishnu Choudhary ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Naveed Momin I/by Shahina P. Qureshi for Applicant.

Ms. S. S. Kaushik, APP for Respondent – State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 21, 2019.

P.C. :

1. The Applicant is seeking regular bail in Crime No. 111 of 2018 for an offence punishable under Sections 376(2)(I) of Indian Penal Code and Sections 3, 4, 5(m) and 6 of Protection of Children from Sexual Offences Act (for short, 'POCSO Act'). The Applicant came to be arrested on 4th July 2018 and was chargesheeted.

2. The Complainant is mother of the victim and the victim is aged about 4 years. The prosecution has come out with a case of commission of an offence under Sections 4 and 5 of POCSO Act.

3. The submissions are, the Applicant is falsely implicated and the medical evidence collected during the investigation is not supporting the case of the prosecution.

4. *Per contra*, the learned APP would strenuously opposed the prayer for grant of bail and submits that the statements of the Complainant, her sister-in-law, Dr. Waman Suryawanshi and the victim recorded under Section 164 of the Code of Criminal Procedure in categorical terms satisfies the ingredients of Sections 3 and 4 of POCSO Act. Further submissions are, the appreciation of medical evidence can be gone into at the stage of the trial.

5. Having appreciated the submissions, what is noticed is, the alleged incident as is narrated in the complaint claimed to have taken place on 27th June 2018 in the late evening hours. It is claimed that on 29th June 2018 Complainant along with her sister-in-law took the victim to Dr. Waman Surwanshi, at that point of time the incident as is claimed to have taken place resulting into registration of crime was not disclosed.

6. Apart from above, the symptoms as were narrated as could be noticed from the statement of Dr. Waman Suryawanshi in categorical terms speaks of the absence of any major injury. After the offence was registered, the victim was subjected to the detailed medical examination and Doctors have not noticed any injury or any symptoms, whereby it could be inferred that the ingredients of Sections 3 and 4 of POCSO Act are satisfied.

7. Though the learned APP has relied upon the statement of the victim and the Complainant, even if the statement of victim is accepted as it is, still the ingredients of Sections 3 and 4 of POCSO Act are not satisfied.

8. Apart from the unexplained delay in lodging FIR and the investigation as reflected in the chargesheet, particularly the medical evidence does not support the case of the prosecution.

9. That being so, a case for grant of bail is made out. Hence, the following order.

ORDER

- (A) The Applicant be released on bail in Crime No. 111 of 2018 for an offence punishable under Sections 376(2)(I) of Indian Penal Code and Sections 3, 4, 5(m) and 6 of Protection of Children from Sexual Offences Act on executing PR Bond of Rs.25,000/- with one surety in the like amount.
 - (B) The Applicant shall neither tamper the evidence of prosecution nor influence the prosecution witnesses.
 - (C) Till framing of charge, the Applicant shall keep himself away from the jurisdiction of the police station.
10. Criminal Bail Application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)