

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

BAIL APPLICATION NO.1064 OF 2019

Rahul Tukaram Marathe	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Sanjeev P. Kadam i/b. Vilasini Balasubramanian, Advocate for the Applicant.

Mr.H.J. Dedhia, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 18, 2019.

P.C. :

This is an application for bail under Section 439 of Cr.P.C. in connection with C.R.No. 351 of 2018, registered with Kothrud Police Station, Pune, for offences punishable under Sections 354, 376(F), 376(A)(B) of Indian Penal Code ("IPC", for short) and under Sections 3, 4, 5(N), 6, 7, 8, 9 and 10 of Protection of Children From Sexual Offences Act, 2012 ("POCSO Act", for short). First Information Report ("FIR", for short) was lodged on 1st November, 2018, by mother of victim. The Applicant was arrested on 1st November, 2018.

2 In the FIR, it is alleged that the victim is a minor girl aged around four years. She was studying at MIT School. On 31st October, 2018, there was a parents meeting in the school of the child. Phone call was received from the teacher of the school intimating that the parents should visit the school. The complainant was informed by the class teacher that the person named Rahul Dada is sexually abusing the victim. The complainant was also accompanied by her sister-in-law. Both of them inquired with the victim. She stated that Rahul Dada is troubling her when the parents are not in the house. She stated that the accused is touching her inappropriately by removing her clothes and also fingering her private part. The statement of the victim was recorded on 1st November, 2018. She reiterated the aforesaid facts in her statement recorded under Section 161 of Cr.P.C. The complainant had stated that the applicant-accused is her nephew and he has been residing with them since last three years. Subsequently, the statement of the victim was recorded under Section 164 of Cr.P.C. on 2nd January, 2019. In the said statement, she stated that Rahul Dada is residing with them. He assaults her for not giving mobile phone. He is not troubling her in any other manner. The statement of complainant was also recorded under Section 164 of Cr.P.C. on the same day. She

denied the incident. She further stated that the accused is related to them. If he had troubled her daughter, she could have informed her. She has no complaint against the Applicant - accused.

3 Learned Advocate for the Applicant submitted that the Applicant is in custody since last one year. He is a student. He has no criminal antecedents. The statement of the victim and the mother recorded under Section 164 of Cr.P.C. do not attribute the alleged acts to the applicant-accused. Medical evidence do not support the prosecution case.

4 Learned APP submitted that the initial statement of the victim attributes the act of sexually abusing the victim. The information was provided to the daughter in the school. Subsequent statements are contrary to the initial statement which is apparent on account of influence.

5 The statement of victim and the complainant indeed attributes the role as stated above to the Applicant. However, statement under Section 164 of Cr.P.C. is completely silent with regards to the allegations appearing in the previous statement. There are two contradictory versions. The Applicant is in custody

since last one year. Apparently, the applicant is related the complainant. The last incident had allegedly occurred on 31st October, 2018. The medical examination papers mentions that possibility of vaginal penetration cannot be ruled out. However, it is also mentioned that from the history and clinical examination, there is no evidence of recent hymond tear. There is no evidence of any fresh injuries over genital. Investigation is completed and charge-sheet is filed. Hence, on certain terms and conditions, bail can be granted to the Applicant.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1064 of 2019, is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R.No. 351 of 2018, registered with Kothrud Police Station, Pune, on his furnishing PR Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (ii) Applicant shall report Kothrud Police Station, Pune, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon;

- (iii) Applicant shall not visit the residence of the victim/complainant and shall not visit the residence of the victim/complainant and shall not try to approach them till the conclusion of trial;
- (iv) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)