

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

BAIL APPLICATION NO. 1013 OF 2018

Sunny Bramha Bagadi	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mrs.Mallika A. Ingale, Advocate for the Applicant.

Mr.M.G. Patil, APP for the Respondent – State.

Mr.Sachin Suryawanshi, API, Kherwadi Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 9, 2019.

P.C. :

This is an application for bail. The applicant is arrested on 6th June, 2017, in connection with C.R.No.808 of 2016, registered with Dindoshi Police Station, Mumbai. Initially offence was registered under Section 363 of Indian Penal Code (“IPC”, for short) and, subsequently, the charges under Sections 376, 376(D) read with 34 of IPC and Sections 3 and 4 of the Protection of Children From Sexual Offence Act (“POCSO Act”, for short), were added.

the daughter of the complainant aged about 16 years left the house alongwith her aunt to go to the shop, but, did not return. On search she was not found in the vicinity. Hence, the complainant believed that the victim must have been kidnapped by unknown person, hence, lodged complaint on 23rd October, 2016. Further, statement of the complainant was recorded on 28th October, 2018, wherein it was stated that daughter of the complainant was traced by her on 25th October, 2016 at Marve bridge, Malad, Mumbai, and she brought her home. Thereafter, complainant made inquiries with her as to who had taken her from 21st October, 2016, and where she was from that day onwards. Victim told her that she was acquainted with a rickshaw driver Rahul Gechand, who is residing in the same area, with whom she had friendship. Victim further disclosed that four months ago Rahul Gechand had taken her to the garden by rickshaw for eating Chinese bhel, and, thrice he had committed sexual intercourse with her. It is further stated that eight days thereafter Rahul took her to his residence and he and his friends Nitin Sarsar and Navin Sarsar committed sexual intercourse with her and threatened her not to disclose the incident to anyone. On 21st October, 2016, the victim was taken through rickshaw by Rahul Gechand and his friends Bobby Gussor and Vijay Gussor to

Marve beach and they had committed sexual intercourse from 21st October, 2016 to 25th October, 2016. Statement of victim was recorded on 28th October, 2016. In the said statement, she stated that four months ago Rahul Gechand had committed sexual intercourse with her. Again he took her to his residence and he along with his friends committed sexual intercourse. She also disclosed alleged incident dated 21st October, 2016. Subsequent statement of complainant was recorded on 14th November, 2016, in which it is stated that the victim was medically examined and it was revealed that she is carrying pregnancy of 11 weeks. It is alleged that victim is having psychiatric disorder.

3 In the statement of complainant who was mother of the victim recorded on 28th October, 2016, there is no reference to involvement of the applicant as one of the person who had sexually assaulted the victim. Supplementary statement of the complainant was recorded on 14th November, 2016, which also do not refer to the involvement of the applicant. Statement of the victim was recorded on 28th October, 2016, alleging sexual assault by the accused persons. However, in the entire statement, she has not referred to the applicant's involvement. Letter dated 6th November, 2016, indicate that the applicant was called at the

police station. Statement of the complainant was, however, recorded on 3rd April, 2017, in which it is stated by the complainant that while the complainant was proceeding with the victim, she had seen the applicant on the way and victim got scarred. However, the victim did not inform her that the applicant was also one of the person who had sexually assaulted her. Complainant has further stated that after about 10 to 12 days thereafter, the victim had noticed one car and informed the complainant that the accused including the applicant and one another person used to take her in the said car and she has been sexually assaulted. Complainant has also stated that from the parents of the co-accused she had learnt that the applicant is also involved in the crime. It is pertinent to note that the statement of the victim was recorded under Section 164 of IPC on 15th April, 2017, wherein she has not referred to the name of the applicant at all. The DNA Report received by the investigating agency received qua the applicant is negative. Learned APP, however, submitted that the car was recovered at the instance of the applicant, which shows the link of the applicant as to person involved in the crime. It is further submitted that the victim was mentally disturbed, and, therefore, there is variation in her statements.

4 As stated hereinabove, in the statement recorded at the initial point of time, involvement of the applicant has not been disclosed. The statement under Section 164 of Cr.P.C. also do not show the complicity of the applicant in the crime. DNA Report do not support prosecution. Co-accused Naveen Kirsan Sarsar has been granted bail by this Court by order dated 13th December, 2018, passed in Bail Application No.2670 of 2018. Considering the aforesaid circumstances, case for grant of bail is made out.

5 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No1013 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.808 of 2016, registered with Dindoshi Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iii) Applicant is directed to attend Dindoshi Police Station, Mumbai, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;

- (iv) Applicant shall not tamper with the evidence;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)