

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

BAIL APPLICATION NO.1791 OF 2019

Pramod Tarachand Khobragade ... Applicant
Vs
State of Maharashtra ... Respondents

...
Mr. Mohd. Umar Kazi for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 6th NOVEMBER, 2019

P.C. :

Heard learned counsel for the applicant and the learned APP for the State.

2 Applicant is seeking bail in Crime No.I-176 of 2018 registered for the offences punishable under Sections 376(a)(b) and 354 of the Indian Penal Code, 1860 ('**IPC**' for short) and under Sections 4,6,8,10 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**' for short). Applicant is paternal uncle of the victim, who was aged 10 years when the alleged incident had taken place.

Complainant is mother of the victim, whose occupation is teacher. She lodged the complaint on 18th July, 2018. Statement of the victim under Section 24 of the POCSO and under Section 164 of the Code of Criminal Procedure, 1973 ('**Cr.P.C.**' for short) has been recorded. Applicant-accused came to be arrested on 18th July, 2018.

3 The learned counsel for the applicant has drawn my attention to the statement of the victim's mother recorded on 13th June, 2018. It shows that on 13th June, 2018, victim was examined by the Doctor at Central Hospital, Ulhasnagar as indoor patient. Her daughter was complaining pain in abdomen. It is her statement that Doctor did not disclose cause of sufferings. This statement does not disclose the alleged incident. However, nearly after a month , i.e., on 18th July, 2018, victim's mother reported to the police that on 15th July, 2018, her daughter disclosed aggravated sexual assault on her by the applicant. It may be stated that the victim in her statement under Section 164 of the Cr.P.C. did not disclose period

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during which the alleged sexual assault was inflicted on her by the applicant.

. Be that as it may, evidence on record does not indicate/show that Investigating Officer has recorded the statement of the Doctor, who had examined victim on 13th June, 2018 nor collected the medical papers of the victim though she was indoor patient in the Central Hospital, Ulhasnagar. The learned APP could not throw light as to why statement of the Doctor and such medical papers of the victim were not collected and incorporated in the charge-sheet. In my view, had there been an evidence to that effect, it could have thrown light as to why complaint was not lodged immediately after the incident or at-least on 13th June, 2018. The learned APP submits that applicant-accused being close relative, victim's mother thought it fit to consult the relatives and may be for that reason, complaint was not lodged on 13th June, 2018 itself.

4 Statement of the complainant recorded on 13th June, 2018 wherein she did not disclose the alleged sexual

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assault on her daughter, creates suspicion about her version on the basis of which subject offence was registered on 18th July, 2018.

5 Thus, taking into consideration evidence on record, I am inclined to grant this application and direct release of the applicant on the following terms and conditions:

ORDER

(i) Applicant shall file an affidavit stating that he shall not enter area within the limits of Municipal Council of Ambernath till the conclusion of the trial. Affidavit shall be filed within seven days in the Court of Special Judge where the charge-sheet has been filed.

(ii) Applicant is directed to be released on executing PR bond in the sum of Rs.15,000/- with one or more sureties in the like amount.

(iii) Applicant shall attend the concerned police station twice in a month on 15th and 30th day of each month for a period of one year.

- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;
- (vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (vii) The applicant shall file an undertaking with regard to clauses (iii) to (v) in the trial Court, within two weeks of his release;
- (viii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the

applicant's bail.

6 The application is accordingly disposed of.

7 It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8 All concerned to act on the authenticated copy of this order.

(SANDEEP K. SHINDE, J.)