

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

CRIMINAL BAIL APPLICATION NO. 2231 OF 2019

Jugesh Mahendra Singh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Rahul Pandey a/w. Ms. Aneeta Vasani, Advocate for the Applicant.

Mr. S.R. Aagarkar, A.P.P. for the Respondent-State.

P.I. Mr. Shivaji Jadhav, Goregaon Police Station present.

CORAM : SANDEEP K. SHINDE, J.

DATE : 14th NOVEMBER 2019.

P.C.

1 Heard learned counsel for the applicant and learned A.P.P. for the Respondent – State. Investigating Officer is present.

2 Applicant is seeking his enlargement release on bail in Crime No.140 of 2018 registered with the Goregaon Police Station, Mumbai for the alleged offences punishable under Sections 376, 354, 354(A), 338, 323 and 506 of the Indian Penal Code (‘**IPC**’ for short) and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (‘**POCSO**’ for short).

3 On 19th December 2018, on report by the victim (16 years old), the subject crime came to be registered, initially under Section 354,

354(A), 338, 323 and 506 of the IPC and Sections 8 and 12 of the POCSO Act and applicant came to be arrested on 19th December 2018.

4 The charge-sheet has been filed, also under Section 4 of the POCSO Act.

5 Learned counsel for the applicant has taken me through the complaint. It is alleged, on 18th December 2018 applicant, lured the victim allegedly to isolated place and attempted to commit the sexual assault. But since victim offered resistance he pushed her down the stairs. Resultantly, she suffered fracture of bone. The applicant took her to Vishwakarma Clinic, at Teen Dongri, Goregaon and thereafter, the victim's mother taken her to Sidharth Hospital.

6 It appears that, victim was admitted in the Cooper Hospital as a in door patient on 20th December 2018 and discharged on 04th January 2019. Prosecution has placed on record her medical treatment papers. Treating doctor on 04th January 2019 certified that "there are signs suggestive of physical injury over the body; there are no sign suggestive the vaginal penetration."

7 Learned counsel for the applicant therefore, submits that there is no evidence at all to show that the victim was subjected to sexual assault.

8 Learned A.P.P. submits, in the supplementary statement, victim has given a clear account, as to how she was subjected to sexual assault by the applicant. I have perused it.

9 A fact cannot be overlooked that in the complaint, lodged on 19th December 2018, allegations of sexual assault are absent. It is not prosecution's case, that soon after the alleged assault, victim was not in a position to give the statement. In fact, she was admitted in the Hospital two days after the alleged incident. A fact cannot be overlooked that doctor attached to the Medical Hospital, has certified that there was no sign suggestive of vaginal penetration. Thus, it is not clear as to how accused has been charged under Section 4 of the POCSO Act.

10 I have also perused the spot panchnama and the map drawn by the prosecution. It shows alleged spot of incident is surrounded by the locality.

11 Taking into consideration, the evidence on record and a fact that the applicant is in custody since 19th December 2018 and trial is not likely to commence in the near future, applicant is directed to be released on bail on the following terms and conditions :

ORDER

(i) The applicant is directed to be enlarged on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall inform particulars of his residence and mobile contact number 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;

(iii) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The applicant shall not stay away from the jurisdiction of the Goregaon Police Station until the conclusion of the trial;

12 The application is allowed in the aforesaid terms and is accordingly disposed of.

13 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.

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

(SANDEEP K. SHINDE, J.)