

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

CRIMINAL BAIL APPLICATION NO. 2201 OF 2018

Nitin Shivaji Shirbhat	... Applicant
Vs.	
The State of Maharashtra	... Respondent

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Mr. Bhaskar J. Sarwade for the applicant.
Mr. R.M. Pethe, APP for the Respondent-State.
Mr. Shweta S. Patil, WPSI, RCF, Police Station is present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th JANUARY, 2019.

P.C.

1. This is an application for bail under Section 439 of Code of Criminal Procedure, 1973 in connection with CR No. 258 of 2018 registered with RCF Police Station. The First Information Report was lodged on 20th September, 2017 for the offence punishable under Sections 376, 506(II) of Indian Penal Code and Section 6, 10 and 12 of POCSO Act. On completing investigation chargesheet was filed for the offence punishable under Section 354, 376, 506II and the aforesaid provisions of POCSO Act.

2. The case of the prosecution is that on 20th September, 2017 the victim child who is aged about 10 years had visited the public toilet in the vicinity of the residence. While returning from the said

place, the accused approached her and took her in auto rickshaw. Thereafter accused had touched the victim girl inappropriately and also sexually assaulted her. The FIR was lodged by the mother of victim on the basis of version given by the victim. Subsequently, supplementary statement of the complainant was recorded on 26th September, 2017. In the said submission, she has stated that the accused had touched the complainant victim inappropriately, kissed her and tried to sexually assault her. It is stated that the complainant had taken the victim in confidence and made inquiry with her with regards to the alleged incident. At that time, she had disclosed the facts which are mentioned in the supplementary statement. The statement of the victim child was recorded on 22nd September, 2017 prior to recording of the supplementary statement of the complainant. Victim in her statement dated 22nd September, 2017 as stated the facts as narrated in the FIR. In the statement dated 26th September, 2017 however the victim has stated that accused had out-raged her modesty and also touched his private part to her private part. She did not alleged sexual intercourse.

3. Learned APP submitted that victim is minor child aged about 10 years and there is every likelihood of some variance in her

version. It is submitted that in accordance with the statement of the victim dated 22nd September, 2017 the offence under Section 376 of Indian Penal Code is complete.

4. Learned counsel for the applicant further submitted that the mother of the victim had taken her into confidence and therefore the supplementary statement of the complainant was recorded on 26th September, 2017 which only refers act of outraging the modesty. It is submitted that the statement of the victim under Section 164 of Code of Criminal Procedure also refers to the act which would amount to the offence under Section 354 of Indian Penal Code. It is pertinent to note that FIR was registered under section 376 of Indian Penal Code and while filling the chargesheet, the offence under Section 354 of Indian Penal Code and was added against the applicant probably on the basis of supplementary statement of the complainant and the victim child. On perusal of the medical case papers, it can be seen that with reference to the information provided by the victim which is noted in clause 22 of the medical report it is stated that incident is of touching the private part. The said clause also reflects that there was no abnormality detected.

5. Applicant was arrested on 21st September, 2017.

Investigation is completed and the chargesheet has been filed. In the light of the aforesaid circumstances, case for grant of bail is made out.

ORDER

- i. Criminal Bail Application No. 2201 of 2018 is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No. 258 of 2017 registered with R.C.F. Police Station on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii. Applicant shall report to the concerned Police Station once in a month on first Saturday between 11:00 a.m. to 1:00 p.m., till further orders;
- iv. Applicants shall not temper with the prosecution witnesses or shall not make any attempt to approach the complainant or victim child;
- v. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)