

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

BAIL APPLICATION NO.2446 OF 2019

Sachin Sunil Mulik .. Applicant

Vs.

State of Maharashtra .. Respondent

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Mr.Sandeep D. Sherkhane, Advocate for the Applicant.

Mrs.A.A. Takalkar, APP for the Respondent – State.

Mr.Suresh K. Sahane, PI North Control Room, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 29, 2019.

P.C. :

This is an application for bail in connection with C.R.No.5 of 2018, registered with Andheri Police Station, Mumbai, for the offences punishable under Sections 377 and 506 of Indian Penal Code (“IPC”, for short) and under Sections 6, 8 and 12 of Protection of Children From Sexual Offences Act (“POCSO Act”, for short).

2 First Information Report (“FIR”, for short) was lodged by the father of the victim. It is alleged that the victim is aged about ten years. On 4th January, 2018, the victim was found

disturbed and hence on inquiry with him, he disclosed that the Applicant-accused had subjected him to sexual assault in June 2017. He also stated that he was threatened by the accused. He further stated that in October 2016 he was subjected to unnatural offence. Applicant was arrested on 4th January, 2018. On completing investigation, charge-sheet is filed.

3 The previous application preferred by the Applicant was allowed to be withdrawn with permission to prefer a fresh application in the event the trial does not commence within a period of six months. Learned counsel for the Applicant submitted that the Applicant is in custody from the date of his arrest. Charge has been framed in June 2019, however, so far no witness has been examined. It is submitted that the medical evidence do not support the version of the complainant. The alleged incident had occurred in October 2016 and June 2017. FIR has been lodged in January 2019. The victim's statement do not refer to penetration. There are no criminal antecedents against the Applicant.

4 Learned APP submitted that the victim is ten years old boy. He was subjected to unnatural sexual assault. On account

of threats, he did not disclose the incident immediately to the parents. It is submitted that there is no progress in the trial Court since the accused is not cooperating in trial. The advocate representing them were absent. Learned Counsel for the Applicant, however, submitted that the Roznama also indicate that the accused was not produced before the Court.

5 There is nothing on record to indicate that witness summons is issued and that the witnesses were present in the Court. Although charge was framed in June 2019, so far no witnesses has been examined. The present application was adjourned from time to time to ascertain whether trial is commenced. Although advocate for accused was not present on some occasions, the accused was not produced before trial Court on some dates of hearing. Learned Advocate for the Applicant submitted that the victim is not residing in the said premises where the alleged incident had occurred. It is submitted that the trial Court has transferred the case to another Court presided over by the women Judge, as the age of the victim is ten years. On perusal of the statement of the complainant, it is apparent that the victim had referred to the fact that the accused had touched his private part to his anus. He has not referred to penetration. The incident had occurred in June 2017 and October 2016,

whereas FIR was lodged in January 2019. Applicant is in custody since January 2018 i.e. almost for two years. In the circumstances, on certain terms and conditions, the applicant can be granted bail.

5 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.2446 of 2019, is allowed;
- (ii) The Applicant be released on bail in connection with C.R.No.5 of 2018, registered with Andheri Police Station, Mumbai, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount;
- (iii) Applicant shall attend Andheri 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) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)