

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2833 OF 2019**

Sandeep Vachaspati Lakheda
Versus
The State of Maharashtra

...Applicant

...Respondent

Mr. Sudeep Pasbola a/w Mr. Karl Rustomkhan i/b Mr. Rahul Arote for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

PI Ms. Rani Laxman Puri from Vanrai Police Station, Mumbai, is present

CORAM : REVATI MOHITE DERE, J.
MONDAY, 14th OCTOBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 110 of 2019 registered with the Vanrai Police Station, Mumbai, for the alleged offences punishable under Sections 377 of the Indian Penal Code and under Sections 6 and 10 of the Protection of Children from Sexual Offences Act.

3 Perused the papers. The applicant is the father of the child, aged 6 years. According to the complainant (mother of the victim child and

wife of the applicant), she was married to the applicant on 6th October 2011. It appears that the complainant left her matrimonial house on 25th May 2017 along with the child. On 20th June 2017, the complainant instituted divorce proceedings as against the applicant in the Family Court and on 28th January 2018, the complainant lodged an FIR alleging offences punishable under Sections 498A, 323, 504, 506, 34 of the Indian Penal Code as against the applicant and the in-laws. It appears that the applicant and the complainant filed Consent Terms in the Family Court on 16th August 2018. According to the Consent Terms, the complainant had agreed to give access of the minor son to the applicant once a month for one hour i.e. on the 3rd Saturday in the Children's Complex, Family Court, Bandra between 3:00 p.m to 4:00 p.m. The complainant had also agreed to give access of his son on 4th September 2018 between 3:00 p.m to 4:00 p.m, at Oberoi Mall on the son's birthday. The complainant has stated that pursuant to the Consent Terms, she took child to the Children's Complex at Family Court on 1st September 2018 to meet the applicant, however, the child started crying and hence, she took the child back home. She has further stated that as per the Consent Terms, she took her son to meet the applicant to Oberoi Mall on 4th September 2018, however, as the son was not willing to meet the applicant and started crying, they did not meet the applicant. According to the complainant, the child would wake up in the

night and start crying, saying that he does not want to meet the applicant and that he should not be taken to the Court. She has stated that pursuant thereto, she took the son for counselling at Urja Counselling and Remedial Centre. She has stated that after two sessions were over with one Dr. Parekh, she disclosed that her son had disclosed to her that the applicant had inserted a stick in his anus, as a result of which, he had sustained a bleeding injury. According to the child, the applicant had inserted a stick in his anus as a punishment for his mischief, when he was staying with him. The child allegedly disclosed to the Counsellor that he did not disclose the same to any person as he was scared of his father. The complainant has further alleged that when she was staying with the applicant's parents, the applicant's father also would inappropriately touch the child and that the same was disclosed to her by her son. Pursuant to the aforesaid, the complainant lodged a complaint on 5th June 2019 as against the applicant and the applicant's father. Learned counsel for the applicant states that no date, month or year has been mentioned when the alleged incident took place. He submits that the complainant had left the matrimonial house in May 2017 and as such, the applicant had no access to the child since then. He further submits that because of the matrimonial dispute between the applicant and the complainant, a false complaint has been lodged as against the applicant and his father.

4 Learned A.P.P states that the statement of the child aged 6 years, both recorded under Sections 164 and 161 are consistent with each other. She further submits that the said fact came to light when the child was sent to a Counsellor. Pursuant to the complaint, the child was sent for medical examination. *Prima facie*, the medical papers do not support the allegations. According to the final opinion, since the incident had taken place two years prior, there were no signs of use of force.

5 Learned counsel for the applicant, on instructions, states that the applicant will not seek the custody of the child till the conclusion of the case. Statement accepted.

6 Whether the allegations are true or not, is a matter, which will be decided by the trial Court. The applicant is in custody since 2nd July 2019. Investigation is complete and charge-sheet is filed.

7 Considering the aforesaid, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be released on cash bail in the sum of Rs. 20,000/-, for a period of six weeks;

- (ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall not seek custody/access of the child, till the completion of the trial;
- (v) The applicant shall inform his latest place of 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;
- (vi) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted.

8 The application is accordingly disposed of.

9 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.

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

REVATI MOHITE DERE, J.