

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

CRIMINAL BAIL APPLICATION NO. 2685 OF 2018

Shahbaz Ahmad Chaudhary .. Applicant

V/s.

The State of Maharashtra .. Respondent

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Mr. Anjali Patil i/b. Ishrat Ali Khan for applicant.
Mr. G.P.Mulekar, APP, for State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th February, 2019

P.C. :

The applicant is seeking bail in CR No. I-283 of 2018 registered with Mumbra Police Station, District- Thane for the offence punishable under Sections 377, 506(2) and 34 of Indian Penal Code (hereinafter referred to as "IPC" for short) read with Sections 4 and 6 of the Protection of Children from Sexual Offences (hereinafter referred to as "POSCO Act" for short) and Sections 3 and 25 of Indian Arms Act.

2. The First Information Report was lodged on 25.05.2018 by the mother of victim. It is alleged that the victim boy aged about 12 years had complained of stomach and knee pain on 18.11.2017. He also suffered from loose motion. He was taken to doctor for treatment. However, the pain continued and he was again taken to doctor after two days. He was again treated. However, health was not improving. The victim was then taken to Ayurvedic doctor at Kausa. He was examined and medication was advised. On 20.12.2017 he was taken to hospital of Dr.Kishor Naik. Medicines were provided. In pursuant to that motion had stopped but the pain continued. He was again taken to doctor. Subsequently, the victim was taken to Rajkot for treatment. From 18.11.2017 to 24.02.2018 the victim boy could not attend the school. The boy then informed the complainant that he should not be sent to Acme class. He was then taken to Dr. Pradeep Bhave for treatment on 28.02.2018. The complainant was informed by the doctor that the boy is under stress. Advice of several doctors was obtained. On 18.3.2018 the victim was sent for tuition. He continued to attend the classes. He was again ill. On

account of ill health on 02.04.2018 he was taken to doctor. On 09.04.2018 while the victim was sleeping the complainant noticed the sign of teeth bite on his thigh and thumb. While in sleep the boy was uttering words with reference to his teacher. The complainant took him into the confidence and inquired as to what has happened. The victim told her that he has committed some mistake in the textbook and hence the teacher has punished him. He avoided talk. The complainant then told the victim to write in the notebook as to what has happened. The complainant noticed that the victim boy had written sexual abuses meted out to him by teacher. The boy informed that on 17.11.2017 after the class was over the applicant and the teacher in the class had sent home the other students and the teachers and told him, Uzaifa and Tousif to sit in the class. The applicant then called Aslam Patel and Faijan Patel to visit the class. Aslam Patel was carrying packet containing tablet. The victim boy and others were asked to consume the tablets. Shahbaz gave 1 tablet to victim Mehmood and 1 tablet each to his friends. After consuming the same the applicant had committed unnatural offence with the victim boy. Aslam Patel committed similar act of

carnal sex with his friend Uzaifa and Faijan Patel did it with Tousif. They were threatened of assault if they inform the incident to any person. Subsequently the victim was called by the accused persons on 13.03.2018 the rope was put around his neck and he was threatened that if he informs the incident to anyone he would be killed. Aslam Patel pointed out gun on his head and threatened him of dire consequences. Faijan Patel was also present. On 31.03.2018 the accused again committed similar act with victim boy, Tousif and Uzaifa. The act was repeated on 01.04.2018 and 02.04.2018 and 04.04.2018. The FIR was lodged on 25.05.2018. The statement of the victim boy was recorded on 25.05.2018. The statement of Uzaifa and other persons were recorded. The applicant was arrested on 27.05.2018. On completing investigation chargesheet is filed.

3. The applicant preferred an application for bail before the Special Court. The said application was rejected by an order dated 21.09.2018.

4. Ld. Advocate for the applicant submitted that the entire case is false. The facts are imaginary. The facts stated in the complaint and the statement of the victim are imaginary. There is delay in lodging complaint. The FIR was lodged after 46 days. It is alleged that three victims were sexually assaulted. The statement of one of the alleged victim Uzaifa was recorded and he has denied of occurrence of such incident, sexual assault was attributed to three accused. Two of them were found to be fictitious. Till today the other two persons identity has not been established and the prosecution has failed to collect any evidence about the involvement of such persons. The complainant had purportedly picked up the names of two accused from the facebook which establishes the fiction use while lodging the complaint and leveling allegation. On the particular day of incident, the complainant's son was absent in the class which establishes the falsity of FIR. The relevance placed on the attendance register, the copy of which is annexed to the application. The entire story has been concocted. The son of the complainant used to remain absent in class while the complainant was insisting for refund of tuition fees which was denied and become the

root cause for filing false complaint. The allegations are not supported by any other corroborative evidence including medical evidence. It is further submitted that the allegations are neither true nor probable and merely contemplates falsehood. Ld. Advocate for the applicant pointed out the statement of Sufera Nasimuddin Khan dated 07.01.2019 the mother of Uzaifa who was allegedly sexually assaulted. The said statement was recorded in respect of her complaint. The statement was recorded by Mumbra police station. She has stated that the complainant in the present case has lodged FIR with Mumbra police station vide CR No.283 of 2018 in which name of her son was also referred to as one of the victim. However, Uzaifa is not subjected to any sexual assault and on the date of the alleged incident reflected in the FIR Uzaifa had gone to Kanpur for attending marriage. Since the said complaint was not supported, she has been abusing and threatening her. Ld. Advocate also pointed out statement of Dr. Talib Surve recorded on 30.07.2018 in which he has stated that the complainant had visited his hospital alongwith her son as he was suffering from headache and other ailment and on examining it was

noticed that the boy was suffering from urine infection and hence he was provided medicines. On 13.09.2017 the complainant again visited the hospital and complained of stomach pain to the victim boy. Medicines were provided. On 15.01.2018 he again visited the hospital alongwith her son. He was examined. The pathology reports were also scrutinized. At that time the complainant had not stated that her son was subjected to unnatural sexual assault.

5. Ld. APP submitted that the offence is of serious nature. The victim boy and others were subjected to unnatural sexual assault. The statement of the victim boy and the complainant attributes overt act to the applicant. The victim is 12 year old boy. He has no reason to falsely implicate the applicant. The evidence collected by the police show the involvement of the boy in the crime. The medical evidence on record supports the prosecution case. The victim and the complainant are being intimidated. The complainant has lodged complaint of threats at police station. The writing executed in the notebook indicates sexual assault. The copies of the NC complaints were pointed out. The Advocate for complainant also submitted

that complainant and victim are being threatened.

6. I have perused the documents on record. The complainant is the mother of the victim boy. The victim was taking treatment for the element prior to lodging the FIR. The statement of the victim boy was recorded under Section 161 of Cr.P.C. on 25.05.2018 and under Section 164 of Cr.P.C. on 14.06.2018. In the statements under Section 161 Mehmood has stated that he was sexually abused on 17th November, 31st March, 1st April, 2nd April and 4th April. The victim has referred to the involvement of applicant, Aslam and person having long hair who had sexually assaulted him. He has made reference to assault upon two other victims, and threats of revolver by Aslam. During the course of investigation, statement of the other victim boy Uzaifa aged about 13 years was recorded on 29.05.2018. He has stated that he attends Acme tuition classes. He has also stated that he knows Tousif who is studying in VIth standard. He had met him one year ago. He also stated that Shehbaz Sir do not teach but he takes round in the class. He also stated that he knows victim boy (son of complainant). On questioning him whether

Shehbaz Sir had met him, victim boy and Tausif in the tuition class he denied the same. He also denied that Shehbaz Sir (applicant) or any other teacher has indulged in any illegal act. He also denied the question that Shehbaz Sir had called Faizan Patel and another person. He further stated that he attended Acme Classes but from 18.10.2018 to 23.10.2018 he had gone to Kanpur alongwith his sister, brother and relatives for attending marriage and they traveled by Lucknow Express through coach No.S-13 and returned through same train on 23.11.2018. Statement of complainant and Mehmood were recorded under Section 164 Cr.P.C. In the said statement victim Mehmood has stated that on 04.04.2018 applicant had made him to wait in class alongwith Huzaifa and Tousif. He called Aslam, who came with three persons. He was given tablet. He consumed and did not remember what has happened, when he regained consciousness he realised that applicant had committed carnal sex. He was committing such act from 17.11.2017. Victim did not refer to sexual assault on other victims. He further stated that on 31.03.2018, 01.04.2018, 02.04.2018 and 04.04.2018 Shehbaj Sir (applicant) committed such acts with him.

Before lodging complaint two persons came in Ola car and assaulted his mother. He was threatened. They were followed. He was assaulted with regards to incident of sexual assault. There is variation in his version compared to earlier statement. There is no reference of sexual abuses against other victim. The surgery Department, Rajiv Gandhi Medical Collage, Thane Municipal Corporation forwarded a letter dated 30.05.2018 to Mumbra police station in answer to the queries raised by the police. In the said letter in answer to query No.1 it is stated that on examination of male child Mehmood Raza no injuries were found in or around anus. No evidence of any bleeding or discharge from the anus and it cannot be said with certainty of anal sexual intercourse. In answer to query No.2 it is stated that it cannot be said with certainty that the child was exposed to sexual intercourse and therefore suffered from symptoms mentioned by the police and query No.3 was replied that, there is no evidence of any injury over the body. The documents also contain the letter written by Chief Commercial Manager, Central Railway to Inspector of Police furnishing information about particulars of Uzaifa Khan. The statement of Uzaifa was

also recorded under Section 164 of Cr.P.C. on 18.06.2018 in which he has stated that the complainant had telephoned his aunt and told that she should scold him as he is also subjected to illegal act. He also stated that the victim boy told him that the applicant had committed wrong act with him. On 18.11.2017 he had gone to Kanpur and returned on 23.11.2017. He do not know anything about the incident. Supplementary statements of the complainant were recorded. On 03.06.2018 she has stated that her son and his friends were subjected to unnatural sexual assault and the photographs of the accused Aslam Patel and Faizan Patel were downloaded by her from the facebook and handed over to the police. The photographs were shown to her son (victim). He could not identify Aslam Patel and Faijan Patel through photographs and that the said persons shown in photographs have not committed any atrocities upon him. The complainant stated that they are different persons and they would be identified if shown to the victim boy. The statement of wife of the applicant was recorded on 16.06.2016. She has referred to the demand of fees by the complainant from the tuition class on the ground that her children are not

regularly attending classes and that her son Mehmood is not keeping well. Statement of Sumaiya Shaikh was recorded. She is one of the teacher in the said tuition class. She stated that she used to open the class at 4 p.m. and closed about 9 p.m. She has also stated that victim was regular in class and hence she had made inquiry with the complainant who stated that he was not keeping well. The witness disclosed ignorance about the alleged incident. Further, statement of complainant was recorded on 27.06.2018 in which she has stated that since persons named Aslam Patel and Faijan Patel could not be identified as the persons who have committed the alleged act by the victim boy, they were set free by the police. The Investigation Officer has recorded the statements of the doctors who had examined the victim boy. Dr.Pradip Bhave stated that the complainant had not stated to him that the victim boy was subjected to sexual assault. The documents also enclosed the sonography report of the victim boy. Statement of Dr.Karnik was recorded who has also stated that the complainant had not informed him about the unnatural sexual assault on the victim boy. Ld. APP submitted that the ultra sonography report dated

04.09.2017 has opinion of mild Hepatomegaly and mild changes of cystitis. It is submitted that these are the signs of the unnatural act to which the victim was subjected.

7. It is pertinent to note that the examination was prior to the alleged incident of sexual assault. Thus, during the course of investigation the identity of two other assailants who allegedly subjected the victim and others to unnatural sex could not be detected. Uzaifa has denied occurrence for such incident. He was not in town at the relevant time. The third victim could not be traced. The applicant is in custody on 27.05.2018. Investigation is completed and chargesheet is filed. Hence, bail can be granted to the applicant on certain condition.

8. Hence, I pass the following order :

ORDER

- (i) Criminal Bail Application No.2685 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-283 of 2018 registered with Mumbra Police Station, District

Thane, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall not tamper with evidence and shall not try to approach and contact the complainant or the victim;

(iv) The applicant shall not enter within the jurisdiction of Mumbra Police Station till conclusion of trial;

(v) The applicant shall furnish details of his residence and mobile number to investigating officer upon release on bail;

(vi) The applicant shall attend nearest police station where he will reside, once in a month on every first Saturday between 11 am and 1 pm;

(vii) In the event of breach of any condition stipulated above, the prosecution and complainant would be at liberty to prefer application for cancellation of bail;

(viii) In the event of apprehension of danger to complainant or the victim, they will be at liberty to approach appropriate authority;

(ix) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks.

(PRAKASH D. NAIK, J.)