

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2709 OF 2018

Mahesh Ramchandra Bhagne
Age 31 Years, Occ. Service,
R/at Hanuman Seva Sangh,Applicant
Madan Galli, S.B. Patil Marg,
Santacruz (West), Mumbai
[Lodged at Bombay Central Prison
Bombay]

V/s.

The State of MaharashtraRespondent
[At the instance of Santacruz Police
Station]

Mr. B. B. Tiwari a/w I. A. Shaikh i/b BBT Legal for the Applicant
Mr. A. R. Kapadia APP for the State
Mr. V. M. Ruchankar, API, Santacruz Police Station

CORAM : PRAKASH D. NAIK, J.

DATE : 26th FEBRUARY, 2019

PC :

1. The applicant is arrested in connection with CR No.209 of 2018 registered with Santacruz Police Station for offences under Sections 363, 341, 376(2)(n)(i), 506 of Indian Penal Code and under Sections 5(1)(m), 6, 10, 12 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). The FIR was registered on 26th March 2018.

2. The case of prosecution is that the victim is nine year old daughter of the informant. On 22nd March 2018 the class teacher of

the victim called the informant and informed him that the victim girl is not feeling well and he should come to school. As the informant was busy in his work at Vashi, he sent his neighbour to school. The neighbour then visited the school. The informant was informed by the neighbour that the accused had sexually assaulted the victim during the period from October-November 2017. On 23rd March 2018 the informant went to school with his daughter. The teacher and the principal contacted an NGO namely Darpan. The informant was advised to approach police station. Accordingly FIR was lodged.

3. The statement of victim was recorded. It is alleged that the applicant -accused used to show the victim obscene videos and used to touch her chest and private part. The victim in her statement recorded on 26th March 2018 had stated that the accused used to insert his private part in her private part. She also stated that the accused had called her in his house. He used to close the doors and show dirty videos to her. He had touched her chest. He also inserted his private part in her vagina. He closed her mouth. The accused also told her not to disclose the incident to any person. He had committed similar acts for about 10 to 12 times. The statement of witnesses were recorded. The statement of victim was also recorded u/s 164 of Code of Criminal Procedure. On completing investigation charge sheet was filed.

4. Learned advocate for applicant submits that the applicant has been falsely implicated in this case. He is in custody since arrest. The charge sheet is already filed. The medical evidence does not support the prosecution case. The statement of victim u/s 164 of Cr.P.C is silent with regards to sexual assault. It is submitted that there was no sexual assault. There is delay in lodging the FIR. No

case u/s 376 of IPC is made out. There are no criminal antecedents against applicant.

5. Learned APP submitted that the offence is of serious nature. The victim is a girl aged about nine years. She has no reason to falsely implicate the applicant. The accused was the neighbour and has taken undue advantage of the fact that victim is a minor girl aged about nine years. The contradictions in the statements can be looked into at the time of trial. The applicant-accused is aged about 35 years and he has subjected the victim to sexual assault to is minor girl of nine years. Assuming that there are some contradictions in her statements, age of the victim will have to be taken into consideration. The statement of victim refers to the fact that accused has told her not to disclose the incidents to any person.

6. I have perused the documents on record. The FIR was lodged by father of victim. The statement of school teacher mentions that the victim had complained about stomach pain and used to omit periodically and sleep in class and some times would not eat her tiffin. These instances were happening repeatedly. Hence, the parents of victim were called. The neighbour had visited the school on behalf of her parents. The NGO was contacted and child was counselled. The parents were advised to take action. Considering the factual matrix of the case, the question of falsely implicating the applicant does not arise. The statement of headmistress of the school was also recorded wherein she has narrated the information provided to her by the school teacher. The statement of victim recorded on 20th March 2018 refers to sexual assault. It is true that the statement u/s 164 of Cr.P.C of victim recorded on 11th April 2018 did not refer to sexual assault. However, the other material on

record indicates victimization of the victim. The age of the victim is required to be taken in to consideration. The medical case papers mentions that there is no evidence of fresh external injuries. It is pertinent to note that the alleged incidents had occurred much prior to the medical examination of victim. It is pertinent to note that medical history provided by the victim indicate that accused had called the victim at his house at about 10 to 12 times between October-2017 and November-2017. The accused used to tell the victim that his cousin sister Gauri had called her. The accused showed her objectionable videos and used to make her lay down on bed. The accused used to press her chest and after removing his clothes and clothes of the survivor, he used to rub his private part over vagina of the victim. The history further mentions that there was no penetration. The medical history also refers to inserting his finger into her vagina. Thus, the allegations are of serious nature. Learned Sessions Judge while rejecting the application for bail has observed that the victim is nine years old. The accused was aged about 35 years.

7. Considering the facts and circumstances stated above, no case for grant is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2709 of 2018 is rejected.

(PRAKASH D. NAIK, J.)