

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

CRIMINAL BAIL APPLICATION NO.2789 OF 2018

Siraj Shabbir Rain	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Ms.Anjali Patil, Advocate for the Applicant.

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

Mr.Avinash Rakshe, PSI Bandra Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 5, 2019.

P.C. :

This is an application for bail in connection with C.R.No.324 of 2018, registered with Bandra Police Station, Mumbai, for the offences punishable under Sections 373, 354 and 506(2) of Indian Penal Code (“IPC”, for short) and Sections 4 and 8 of Protection of Children from Sexual Offence Act (“POCSO Act”, for short). Complaint was lodged on 23rd June, 2018 by mother of the victim. It is the case of the prosecution that the victim aged about 13 years was sexually assaulted by the applicant on two occasion in the month of May 2018. It is alleged

that on 21st June, 2018, it was noticed that the victim was pregnant and after taking her into confidence, she had disclosed that the applicant had sexually assaulted her. Statement of the victim was also recorded, wherein she has stated that the applicant-accused had forcibly sexually assaulted her.

2 Applicant was arrested. On completing investigation, charge-sheet is filed. It is submitted by the counsel for the applicant that the applicant has been falsely implicated in this case. DNA Report do not support the prosecution case. It is further submitted that the dates given by the complainant and the victim with regards to the alleged sexual assault are imaginary, as it is not possible that the victim would be pregnant of nine weeks, considering the date of alleged sexual assault. It is further submitted that there is enmity between the family of the applicant and the complainant. Learned counsel pointed out the NC complaint lodged prior to FIR, wherein it is stated that the son-in-law of the complainant was threatened by the family of the accused of false implication. It is submitted that on account of enmity, it is not possible that the accused would indulge in such act. There is no other evidence to support the prosecution case.

3 Learned APP pointed out the statement of the complainant as well as the victim. It is submitted that the report with regards to the DNA was not conclusive, as samples forwarded for examination were unsuitable for paternity test. I have perused the documents on record. The victim is apparently of about 13 years old. Her statement was recorded. In her statement, she has attributed specific role to the applicant. The victim is pregnant. At this stage, no infirmity can be found with the dates given by the victim, as she is minor child aged about 13 years. The version of the victim cannot be doubted at this stage. The grounds raised by the applicant are matter of evidence. In the circumstances, no case for grant of bail is made out and the application is rejected.

(PRAKASH D. NAIK, J.)