

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2870 OF 2018

Nilesh @ Sachin Mohan Sawant, Age 21 years,
Occ.Student, R/o.Ramrahim Mitra Mandal,
Nityanand Nagar, J.P.Road No.10,
Ghatkopar (W), Mumbai-400 080.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Vishal V. Ingawale for applicant.

Mr.A.R.Kapadnis, APP, for State.

Mr.Vilas Datir, Police Inspector, Ghatkopar Police Station, preseat.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th January 2019

PC :

1. The applicant is seeking bail in CR No.165 of 2018 registered with Ghatkopar Police Station for offences under Sections 363, 376(D), 377 of Indian Penal Code and under Sections 4,6,8 and 10 of Protection of Children from Sexual Offences Act.

2. The case of prosecution is that the victim aged about 16 years was studying in 11th standard. On 17th March 2018 the victim had left her house for going to college. However, she did not return. Hence mother of victim lodged complaint on 21st March 2018 against unknown persons for offence u/s 363 of IPC. Subsequently the victim was traced and on the basis of her version, the other penal provisions, as stated above, were invoked. From the statement of complainant it can be seen that she had left house on 17th March 2018. After attending her examination in the college, she went to

Sion to meet her friend. She stayed at the house of her friend. On 18th March 2018 she alone went to Powai Garden. Since the victim wanted to go home, she gave call to applicant-accused and called him at Powai. At about 9 pm, the applicant-accused took her to the godown situated near Chandani Lodge at Ghatkopar. Both of them consumed liquor. She was under intoxication. At that time the accused had sexual intercourse with her. The applicant dropped her home. On 19th March 2018 the mother of victim inquired with her as to why applicant had accompanied her. On 20th March 2018 the victim again went to college and met the other accused. She had consumed liquor with them and at that time the said accused had sexually assaulted her. On account of fear the victim did not inform the incident to her mother immediately. The statement of victim was recorded on 28th March 2018. the applicant was arrested on 24th March 2018. Investigation is completed and charge sheet is filed.

3. Learned advocate for applicant submitted that the complaint is absolutely false. There is variation in the statement of victim recorded u/s 161 of Cr.P.C and statement recorded to the Child Welfare Committee as well as statement recorded u/s 164 of Cr.P.C. It is further submitted that medical evidence does not support the version of complainant. It is submitted that the version reflected in the statement of victim are difficult to accept as she did not lodge any complaint immediately nor informed about incident to her mother on 17th March 2018.

4. Learned APP submitted that the victim was minor at the time of incident. The statement of victim was recorded u/s 164 of Cr.P.C. She had referred to the incident of sexual assault.

5. I have perused the charge sheet. The victim has left house on 16th March 2018. The alleged incident had occurred on 17th March 2018. The incident of sexual assault qua the co-accused which had allegedly occurred on 20th March 2018 has no connection with the alleged incident. It is pertinent to note that the victim was dropped by the applicant as reflected in the statement of victim. She did not make any grievance about incident to her mother. The statement also indicates that the victim had called the applicant had Powai Garden and thereafter allegedly she had consumed liquor and while under intoxication the incident of sexual assault had taken place. On perusal of the medical evidence it can be seen that there was no abnormality detected on the person of victim. Investigation is completed and charge sheet is filed. In the factual matrix of this case, further detention of applicant is not necessary. The applicant is in custody from the date of arrest. Case for grant of bail is made out.

6. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2870 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.165 of 2018 registered with Ghatkopar Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Ghatkopar Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;

- (iv) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks;
- (v) The applicant shall not approach the complainant and shall not enter in the vicinity where the complainant resides and/or near the vicinity of the college where she is studying.

(PRAKASH D. NAIK, J.)

MST