

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

CRIMINAL BAIL APPLICATION NO. 3019 of 2018

Sanjay Dattu Dabhade

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Mr. Arun Rajput i/b Ms. Anjali Patil, for the Applicant.

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

Ms. Vaishali S. - API, Chembur Police Station present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th FEBRUARY, 2019.

P.C.:

This is an application for bail in connection with C.R. No. 235 of 2018 registered with Chembur Police Station, Mumbai, for the offences punishable under Sections 376, 354, 354-A and 506 read with 34 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and Sections 4, 6, 8, 10 and 12 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act' for short).

2. The applicant was arrested on 18th July, 2018. It is the case of prosecution that the complaint is lodged by the mother of victim. It is alleged that the complainant is residing alongwith her two minor children aged nine years and seven years. She is taking Tuitions to earn for her livelihood. Her husband is working abroad. The applicant-accused is their neighbour. Both the families are known to each other. The children of the complainant used to visit the house of the applicant. On 17th July, 2018, the victim girl was crying. On enquiry, she stated that she had been to house of the applicant to watch television, at that time, the applicant put his hand inside her t-shirt and pressed her chest and also touched her private part. The wife of the applicant-accused noticed the same and shouted at him. The complainant confronted the applicant. He apologized. Complainant then took the victim girl in confidence and made enquiry with her and at that time, the victim stated that the accused had subjected her to sexual assault in May and June, 2018. Sometimes he used to insert his finger in the private part of the victim, kiss her on her lips and also has inserted his private part in the private part of the victim. The accused has threatened the victim and told her not to disclose the incident to any person. The First

Information Report (hereinafter referred to as 'FIR' for short) was lodged on 18th July, 2018. The statement of the victim girl was recorded. The statement of the brother of the victim was also recorded. On completing investigation, charge-sheet was filed.

3. Learned Advocate for the applicant submitted that there is delay in lodging FIR. The complaint is false. The applicant has been falsely implicated in this case. Both the families are known to each other. The incidents have occurred in May, 2018 and June, 2018. The victim had not disclosed the same to her mother. Medical evidence does not support the version of the victim. The investigation is completed and the charge-sheet is filed. There is variation in the statement of the victim and her version made before the complainant. The medical report is silent. Considering the age of the victim and the version of the victim, there would have been injuries to the victim. Since, the charge-sheet is filed, further, custody of the applicant is not necessary.

4. Learned APP submitted that there is sufficient evidence against the applicant. The victim is the girl aged about nine years

and there is no reason to disbelieve her. The statement of the brother of the victim, who is also a minor, shows involvement of the applicant in the crime. Merely, on account of the fact that medical evidence is silent, the applicant is not entitled for bail when the version of the victim is apparently genuine. It is submitted that considering the age of the victim, she may not have been physically examined by the Doctors to determine sexual assault. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Lillu @ Rajesh and anr. V/s. State of Haryana, AIR 2013 Supreme Court 1784***, and submitted that in a given case the version of the victim, who was subjected to sexual assault, should be given weightage as its strength of higher pedestal.

5. I have perused the statement of the complainant recorded on 18th July, 2018. The victim girl is aged about nine years. Her brother is younger than her. Their statements were recorded under Section 161 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.' for short). The victim girl has referred to the fact that the applicant had subjected her to aggravated sexual assault. The version of the victim would attract the provisions of Section 376 of

IPC. There may be slightly variation in the statement of complainant and the victim but the same would not dilute, the overt-act attributed to the applicant. The statement of the brother of the victim also reveals involvement of applicant. The victim boy has also stated that the accused had touched his private part. Even in the absence of any medical report, there is sufficient evidence to show the involvement of the applicant in the crime. There is no reason to disbelieve the version of the victim girl and her brother. Hence, the application for bail is required to be rejected.

6. Hence, I pass the following order:

ORDER

Bail Application No. 3019 of 2018 is rejected.

(PRAKASH D. NAIK, J.)