

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

CRIMINAL BAIL APPLICATION NO.3069 OF 2018

Haresh Rajesh Patil .. Applicant

Vs.

State of Maharashtra .. Respondent

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Mr.Chaitanya K. Pendse i/b. Ms.Siddhi Bhosale, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

Mr.N.P. Parab, PSI, Juhu Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 13, 2019.

P.C. :

This is an application for bail in connection with C.R.No.164 of 2018, registered with Juhu Police Station, Mumbai, for the offences punishable under Section 376, 377, 354(A) and 506(II) of Indian Penal Code ("IPC", for short), Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act ("POCSO Act", for short) and Section 67(B) of Information Technology Act ("IT Act", for short).

2 First Information Report ("FIR", for short) was lodged on 7th April, 2018, by the aunt of the victim. It is alleged that from

3rd April, 2018, onwards the complainant had observed that the victim was in a disturbed state of mind. Subsequently, victim had disclosed that she was acquainted with the applicant accused who was residing in the same building and he has made arrangement for providing her SIM card which was installed in the cell phone lying in her house and the same was being used in chatting with accused. The record indicates that there were calls between the applicant the victim. According to the complainant, the victim disclosed to her that during the period from January 2018 to 31st March, 2018, the accused used to call the victim to his house and she was shown objectionable photographs and on two to three occasions, he had sexually assaulted her. She was subjected to sexual intercourse as well as unnatural acts. The said disclosure was made somewhere on 6th April, 2018. The victim has also stated that on account of sexual assault, she had suffered bleeding. Immediately after the registration of the FIR, the victim was sent for medical examination. Her statement was also recorded on 8th April, 2018. Applicant was arrested on 7th April, 2018. On completing investigation, charge - sheet was filed.

to the documents forming part of the charge-sheet, such as statement of complainant, victim and the medical case papers. It is submitted that the version of the applicant is not supported by medical evidence. The statement of the complainant, victim and the medical evidence is contrary. The history provided by the victim is also contrary to her version reflected in her statement. There is nothing on record to indicate that a mobile phone of the applicant was containing objectionable photographs. It is submitted that the applicant is in custody from the date of arrest. There are no criminal antecedents against the applicant and he is willing to abide any conditions imposed by the Court.

4 Learned APP submits that the victim was minor at the time of incident. The medical papers indicate that the possibility of sexual assault is not ruled out. He further submitted that although the complainant have stated that the victim was subjected to sexual intercourse and unnatural act, the history provided to the doctor during the examination indicate that she was subjected to unnatural offence. Considering the age of the victim, benefit could not be given to the applicant accused about the contradictory version.

5 I have perused the charge - sheet. As stated above, FIR was lodged by the aunt of the victim. On perusal of the FIR, it is apparent that the victim was a minor was acquainted with the applicant - accused. The accused had provided the victim SIM card, which was installed in the cell phone lying in the house and apparently the call data show that there were calls between both. According to the complainant, the victim was subjected to sexual assault during the period from January 2018 to 31st March, 2018. This disclosure was made by the victim somewhere on 6th April, 2018. Immediately, thereafter she was taken for medical examination. On perusal of medical case papers, it can be seen that the history provided by the victim was that there was no sexual intercourse and at the most she was subjected to unnatural act. The medical evidence also indicate that there was no sexual intercourse. It is stated that there is no evidence of any injury or bleeding. Thus, the history provided by the victim indicate that she was subjected to unnatural act. However, *prima facie*, there is no corroborative medical evidence to support the said version. Column 18 of the medical report indicate that there is no evidence of bleeding injury laceration etc. The statement of victim was recorded, on 8th April, 2018. As stated above, there is major variation in the statement and the version is not supported

prima facie by medical evidence. Considering the factual matrix of the case, bail can be granted to the applicant on certain conditions. Hence, the application is required to be allowed.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Bail Application No.3069 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.164 of 2018, registered with Juhu Police Station, Mumbai, on his furnishing P.R.Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report D.N. Nagar Police Station once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m, till further orders;
- (iv) Applicant shall not reside within the jurisdiction of Juhu Police Station, Mumbai;

- (v) Applicant shall provide details about the place of his residence to the investigating officer after his release on bail;
- (vi) Applicant shall not tamper with the evidence and shall not try to approach the victim or the complainant;
- (vii) Applicant shall attend the trial Court on the date of hearing of the case regularly, unless exempted by the Court;
- (viii) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)