

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3075 OF 2018

Anwar Ashfaq Sheikh, Age 21 years,
Occ.Nil, R/o.Flat No.204, E-Wing,
Shree Ganesh Co-op. Housing Society,
Gautam Nagar, Road No.8, MIDC,
Andheri (East), Mumbai-400 093.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Subhash Jha with Ms.Sanjana Pardeshi I/by Mr.Sanjay Singh for applicant.

Mr.S.R.Agarkar, APP, for State.

Mr.D.R.Uttekar, Police Inspector, Khar Police Station, present (then attached to MIDC Police Station).

CORAM : PRAKASH D. NAIK, J.

DATE : 21st January 2019

PC :

1. This is an application for bail in CR No.283 of 2018 registered with MIDC Police Station, Mumbai. The applicant was arrested on 18th June 2018. The FIR was lodged on 17th June 2018 for offences under Sections 307, 376, 377, 354(B), 342, 366, 506(2) of Indian Penal Code and under Sections 4 and 8 of Protection of Children from Sexual Offences Act.

2. In the FIR it is alleged that the victim girl aged about 16 years had gone to the grossery shop situated near her house and after purchasing the grossery she was returning home. While she was climbing the staircase, the accused, who is residing in the same building, met her on the second floor. He took the bag from her hand and took her inside the room by opening the door of the said

room by key which was in his possession. It is alleged that he had put his hand on her mouth and after taking her inside, he tried to sexually assault her. Someone had knocked the door and as such the victim wore her clothes. Her dupatta was lying near the gallery and to pick up the same she went to gallery. There were no grills to the gallery. At that time the accused pushed her, as a result of which she fell down and sustained injuries.

3. She was taken to hospital for treatment. The aforesaid statement was recorded on 17th June 2018 in the presence of Police Sub Inspector, MIDC Police Station, one witness namely Manju Kamble. The statement also bears the endorsement that the victim is mentally and physically fit for recording statement. Subsequently a supplementary statement of the victim was recorded on 18th June 2018. In the said statement it is alleged that the accused had sexually assaulted her having committed forceful intercourse and unnatural sex.

4. During the course of investigation the statements of witnesses were recorded. The victim was medically examined. On completing investigation charge sheet is filed.

5. The advocate for applicant took me through the documents on record which are part of charge sheet. It is submitted that the victim had changed her version subsequently. It is further submitted that the victim was initially admitted to Holy Spirit Hospital and family members of her demanded that she should be taken to another hospital namely Cooper Hospital and thereafter she was treated at Cooper Hospital. It is further submitted that there is no evidence to

show that there was any attempt to commit murder of the victim. Learned counsel pointed out the medical case papers with respect to treatment provided to the applicant, which indicate that there was no external injury to her. The documents also show that she was in a fit condition and subsequently she was discharged. Learned counsel also drew my attention to the medical case papers of the applicant who was treated for the injuries sustained by her. It is contended that the version of sexual assault as well as attempt to commit murder is being concocted. The said version is not supported by any evidence on record. Learned counsel also pointed out the observations of medical examination of the victim and submitted that the same do not support the theory of the complainant that she was sexually assaulted by the applicant.

6. Learned APP submitted that the victim was minor at the time of incident and hence provisions of POCSO Act are invoked. It is submitted that the supplementary statement of the complainant refers to sexual intercourse and unnatural offence. He also relied on statement of grandmother of the victim who has stated that the incident had occurred behind the closed doors and the doors were required to be broke opened forcefully. At that time nobody was in the room and the victim was found lying in injured condition. Learned APP also submitted that medical examination of the victim also indicated that the sexual assault is not ruled out. It is further submitted that the family members of the victim had insisted for admitting the victim to Cooper Hospital as they could not afford the medical expenses in Holy Spirit Hospital. Learned APP also pointed out the statement of victim recorded u/s 164 of Cr.P.C.

7. I have perused the said statement. The version of the victim in the said statement indicate that the accused had attempted to sexually assault her and thereafter pushed her. The statement does not mention about sexual intercourse or unnatural offence. The aforesaid statement was recorded on 25th June 2018 i.e. subsequent to the supplementary statement of the complainant which was recorded on 18th June 2018. On perusal of the documents on records it is apparent that the victim was in a position to talk and record statement on 17th June 2018, which is evident from the endorsement on the said statement. On perusal of the medical case papers, as stated hereinabove, the question whether there was sexual intercourse or unnatural offence, is debatable. It is also apparent that the applicant had also sustained some injuries and he was treated in the hospital. The version of the victim as spelt out in the FIR is also appearing in the statement u/s 164 of Cr.P.C. The C.T scan report of the victim also indicate that there was no deformity. On going through the documents on records and considering the fact that the applicant is arrested on 18th June 2018 and on completing investigation charge sheet is filed, further detention of the applicant is not necessary and case for grant of bail is made out.

8. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application NO.3075 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.283 of 2018 registered with MIDC Police Station,

Mumbai, 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 MIDC Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;

(iv) The applicant shall not tamper with the evidence and shall attend the Trial Court proceedings regularly, unless exempted by the Trial Court for some reason.

(PRAKASH D. NAIK, J.)

MST