

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 3118 OF 2018**

NAVNATH DYANU JADHAV

.....APPLICANT

Vs.

THE STATE OF MAHARASHTRA

.....RESPONDENT

Smt. Misbaah Solkar I/by Mr. Amin Solkar for the Applicant.
Ms. J.S. Lohokare APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 18th APRIL, 2019.****P.C.:-**

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. 194 of 2018 dated 8th August, 2018 registered with R.A.K. Marg Police Station, Mumbai under Sections 377 and 506 of the Indian Penal Code and under Sections 4, 6, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act).

2 The victim was aged about 15 years on the date of lodgment of the crime and with a view to protect his identity and in consonance with the provisions of Section 228(A) of the Indian Penal Code and Section 33(7) of the POCSO Act, the detailed narration of

facts mentioned in the first information report and in the statement of the victim are hereby avoided.

3 Heard the learned counsel for the Applicant and the learned APP. Perused the charge-sheet.

4 The first information report dated 8th August, 2018 is lodged by the aunt of the victim.

It is stated that, the witness Rakesh told her that on 7th August, 2018 at about 6.45 p.m the victim was roaming with the Applicant at an isolated place situated at Ramtekdi, Shivree, Mumbai and therefore, she confronted the victim for the same wherein, the victim narrated her the sexual assault committed by the Applicant upon him and thereafter, the present crime is registered. During the course of investigation, police have also recorded the statement of the victim. The Applicant has been arrested on 8th August, 2018 and after completion of investigation police have submitted charge-sheet.

5 The learned counsel for the Applicant submitted that, the version of the victim and the informant is not corroborated by medical evidence. She submitted that, the doctors attached to the Department of Forensic Medicines of G.S. Medical College, Mumbai have opined that, there is no evidence of recent anal penetration. She submitted

that, there is every possibility of the Applicant being falsely implicated in the present crime by tutoring the victim. She submitted that, the victim did not disclose the alleged forcible assault upon him immediately to his aunt and it is only after the witness Rakesh told his aunt about the fact that the victim was roaming with the Applicant on an earlier date at an isolated place in the locality, the present crime is registered.

She further submitted that, the said witness Rakesh is at loggerhead with the Applicant and therefore, at the instance of Rakesh, the present Applicant has been implicated in the present crime. She further submitted that, the Applicant is in Jail since 8th August, 2018. The police have already completed investigation and submitted charge-sheet and therefore, the Applicant may be released on bail even by imposing most stringent conditions.

6 A perusal of charge-sheet would indicate that, the victim in his statement has in detail narrated the ordeal suffered by him at the hands of Applicant at the said isolated place. The victim has stated that, earlier on 2 to 3 occasions also the Applicant had sexually exploited him and had administered threat of dire consequences if the victim discloses the said fact to anybody.

It is to be noted here that, the witness Rakesh had seen the victim and the Applicant at the said isolated place in a deserted house and had in fact stealthily seen the alleged act committed by the Applicant. It is the specific prosecution case that, after the said witness Rakesh informed the said fact to the aunt of the victim, she confronted the victim about the same and thereafter, the victim disclosed the said fact to her and the present crime is thereafter registered.

7 As far as the contention of the learned counsel for the Applicant that, the medical evidence does not support the contention of the victim is concerned, the definition of Section 3(a) of the POCSO Act mentions the words “to any extent”. Thus, the penetration in the private part/anus of the victim to any extent by the accused is sufficient to attract Section 4 of the said Act.

It is the settled position of law that, the statement of victim/the testimony of a prosecutrix cannot be disbelieved even if the doctor, in a given case, finds no sign of rape. That the Courts must deal with such case with utmost sensitivity and should examine broader probabilities of the case and may not get swayed by minor contradictions or insignificant discrepancies in the statement of the

prosecutrix. Reliance can be placed on a decision of the Supreme Court in the case of *Moti Lal Vs. State of M.P.*, 2008 ALL M.R. (Cri.) 2583 (S.C.).

8 After perusing the statement of the victim in the present case, it appears to be trustworthy and reliable and it inspires confidence in the mind of this Court. The offence alleged against the Applicant is heinous in nature. The Applicant is residing in the same vicinity of the victim.

9 In view of the above, this Court is of the opinion that the Applicant does not deserve to be released on bail.

Application is accordingly rejected.

(A.S. GADKARI, J.)