

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

CRIMINAL BAIL APPLICATION NO.3189 OF 2018

Jitendra Omprakash Maurya @ Kushwaha ...Applicant

Versus

State of Maharashtra & ors. ...Respondents

Mr.Jash B. Vyas for the applicant.

Mr.R. M. Pethe, APP for the respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st FEBRUARY 2019

P.C. :

1. This is an application for bail in CR No.454 of 2017 registered with Dahisar Police Station, Mumbai for offences punishable under Sections 376, 354, 342, 500, 323, 504, 506 of the Indian Penal Code, 1860 and under Sections 4, 8, 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The FIR was lodged on 5th July, 2018. The applicant was arrested on the same day.

2. The prosecution case is that the victim is aged about 17 years and residing with her parents. She used to visit the shop known as “Om Medical” which is situated within the locality and she got

acquainted with the applicant/accused and his elder brother. On 1st July, 2018, the victim went to the shop situated near her house and while returning she noticed that the applicant/accused was sitting in his house who called her to his house. When she entered into the house, the applicant/accused closed the shutter of his house and had allegedly committed sexual intercourse. After sometime, the elder brother of the applicant/accused had reached the house and on noticing the applicant/accused and the victim together, he tried to outraged the modesty of the victim and left the premises. It is alleged that brother of the applicant/accused again arrived at he spot with the mother of the victim. In pursuance to that, FIR was lodged on 5th July, 2018. The applicant had preferred an application for bail before the Sessions Court which has been rejected. The brother of the applicant/accused has been granted bail.

3. Contention of learned counsel for the applicant is that the false case has been registered against the applicant/accused. The applicant/accused and the victim were in relationship. The complaint was lodged after five days from the date of the incident. It is further submitted that the medical examination does not support the prosecution case. There was an affair between the

applicant/accused and the victim which is borne out from photographs. Further, it is submitted that they were in relationship for the last six months. The applicant has photographs to indicate that he had love affair with victim.

4. Learned APP submitted that the victim was minor at the time of the incident. It is submitted that the relationship was not consensual and the victim was sexually assaulted by the applicant/accused without her consent.

5. It was noted that the FIR was lodged after a period of about five days. According to the complaint, the brother of the applicant/accused had visited the spot and immediately left the spot and returned with the mother of the victim. Apparently, the victim had visited the house of the applicant/accused after he called her inside the house. The prosecution is relying upon two certificates which bear different date of birth. The medical examination report indicates that no fresh injury was noticed. The medical report, however, indicates that there were nail marks. There are no antecedents against the applicant/accused.

6. Taking into consideration the factual matrix of the case, the

applicant/accused can be granted bail on certain conditions.

7. Hence I pass the following order;

ORDER

- (i) Bail Application No.3189 of 2018 is allowed;
- (ii) The applicant is directed to be released on bail in connection with CR No. 454 of 2017 registered with Dahisar Police Station, Mumbai, on his furnishing PR bond in the sum of Rs.25,000/- with one more sureties in the like amount;
- (iii) The applicant shall attend the concerned police station once in a month on the first Saturday of every month between 11.00 am to 1.00 noon 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;
- (v) The applicant shall not approach the victim, the prosecution witnesses or her relatives in any manner;
- (iv) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks.
- (v) Bail Application stands disposed.

[PRAKASH D. NAIK, J.]