

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

CRIMINAL BAIL APPLICATION NO. 3392 OF 2018

Sopan Nivrutti Ugale

...Applicant

Vs.

The State of Maharashtra and Anr.

..Respondents

Mr. Prem Shankar Pandey for the Applicant.

Mr. Prashant Jadhav, APP for the respondent – State.

Mr. Khandagale, PSI, Kurar Police Station, Mumbai.

CORAM : PRAKASH D. NAIK J.

DATE : 26th FEBRUARY, 2019

P.C.:

1 This is an application under Section 439 of Code of Criminal Procedure seeking bail in CR No. 350/2018 registered with Kurar Police Station, Mumbai for the offences punishable under Section 376(2)(f) of Indian Penal Code r/w. 4,6, and 8 of POCSO Act, 2012. The applicant was arrested on 15.06.2018. The first information report was registered on 14.06.2018. The prosecution case is that the victim child aged about 8 years had come to Mumbai with her family for vacation. The victim and the family members had gone to Shirdi. After visiting the temple the family returned to Mumbai on 14.06.2018. During the course of travelling the sibling and parents of the victim were asleep. The victim was sleeping on the back seat of the bus. The applicant / accused boarded the bus at Sangamner in the early hours on 14.06.2018 and while the victim girl was sitting on the back seat she was sexually assaulted by the accused. If reaching home victim

narrated the incident to her mother and aunt. They telephoned tourist operator from whom the tickets were booked and informed the operator that the passenger has committed sexual assault on the victim during the course of traveling. The complainant and others visited the office of the tour operator. The accused was sleeping on the back seat. The victim was asked whether he is the same person. The victim identified him as the person who sexually assaulted her. The accused then realized that he will be apprehended and he opened the window and started running from the spot. Subsequently he was arrested. On completing investigation, charge sheet is filed.

2 Learned advocate for the applicant submits that the applicant has been falsely implicated in this case. This is an case of mistaken identity. The victim did not complain to the parents immediately. Except the statement of the victim there is no evidence to establish the crime. The applicant is working as a bus driver with B.E.S.T. Mumbai. He is in the custody from the date of arrest, investigation is completed and the charge sheet is filed and however the custody is not necessary. Since alleged incident has occurred during the travel in the night on the back seat of the bus and there was no occasion for the victim to see the accused and therefore, the identification of the accused cannot be accepted. The offence as alleged is not made out against the applicant.

3 Learned assistant public prosecutor submitted that the investigation reveals that the applicant is the person who is sitting on the back seat. He has been identified by the victim. The statements of witnesses shows the involvement of the applicant and he tried to run away from the bus after knowing that he will be apprehended by the complainant and others.

4 I have perused the charge sheet. The victim is aged about 8 years. The evidence on record indicates that the applicant was sitting on the back seat. He had boarded the bus at Sangamner. The statement of the driver of the bus was recorded in which he has stated that the applicant had informed him that he is feeling sleepy and he sat on back seat. Victim pointed out the accused she had identified him as the same person. The statement of the victim indicate that she was sexually assaulted. The victim has stated that the accused was touching her private part. He gave his private part in her hand. She further stated that the accused was sleeping on back seat when she had visited travel operators office and she identified him and he ran away. She had informed her mother that the accused was inappropriately touching her private part. Thus, prima facie evidence shows that the involvement of the accused. He was not entitled for grant of bail. I pass the following order:

ORDER

- i) Application stands rejected.

(PRAKASH D. NAIK, J.)