

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

CRIMINAL BAIL APPLICATION NO.3409 OF 2018

Albertino Justin Mascarenhas

... Applicant

Vs.

State of Maharashtra

... Respondent

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Mr.Nitin S. Satpute, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for Respondent – State.

Mr.Vijay Kandalgaonkar, PI MHB Colony Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : JANUARY 31, 2019.

P.C.

This is an application for bail. The applicant is arrested in connection with C.R.No.273 of 2018, registered with MHB Colony police station, Mumbai, for the offence punishable under Sections 376(1), 354 and 506 of Indian Penal Code (“IPC”, for short) and under Sections 4, 8 and 11 of Protection of Children from Sexual Offences Act (“POCSO”, for short). First Information Report (“FIR”, for short) was lodged on 15th August, 2018. On the same day, the applicant has been arrested.

2 The prosecution case is that the complainant is mother of the victim. According to complainant, the victim is aged about 16 years. She was attending the religious classes. The accused was one of the teacher delivering religious lectures with regards

to confirmation classes to one of the group. It is alleged that the applicant sexually abused the victim since November 2017. On 27th November, 2017, the accused had purportedly tried to come close to her. On 10th December, 2017, the accused had brought the victim to the class and at that time had outraged her modesty. On 4th February, 2018, the victim was sexually abused by the accused. It is alleged that the accused was harassing the victim. On 18th March, 2018, the accused had again tried to get close to the victim. It is alleged that in pursuant to that FIR was lodged on 15th August, 2018. Statements of witnesses were recorded on 16th August, 2018.

3 Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. The complainant, victim and the applicant were acquainted with each other. Reliance is placed on the Whatsapp messages to submit that the relationship between them was cordial. It is submitted that the Whatsapp messages were forwarded to the investigating officer by letter dated 20th December, 2018. But, no cognizance of the same has been taken by the police. It is submitted that it is not the case of the prosecution that there was sexual intercourse between the applicant and the victim. The relationship was consensual nature. The applicant is in custody from the date of arrest. Investigation is completed.

4 Learned APP submitted that the statements of the victim and the complainant attribute specific role to the applicant having sexually abused to the victim. It is submitted that the FIR was lodged by the complainant after taking the victim into confidence. It is submitted that the accused had made confessional statement before one of the witness whose statement was recorded on 27th August, 2018. Prosecution is also relying upon the CDR record. It is further submitted that the victim was minor at the time of incident.

5 I have perused the charge-sheet and the other documents annexed to this application. It appears that the applicant and the victim were acquainted with each other. The accused is relying upon the Whatsapp messages. The said messages are not part of the charge-sheet and it would be the defence of the applicant at the time of trial. However, the acquaintance of the applicant and the victim was from November 2017. The complainant has referred the incident of November 2017, 14th February, 2018 and 18th March, 2018. The incident relates to outraging modesty and sexual abuse. The statement of the victim was recorded under Section 164 of Cr.P.C. The investigation is completed and charge-sheet is already filed. The applicant is in custody from 15th August, 2018. There are no reported antecedents against the applicant. Considering the aforesaid circumstances, and the documents on record, further

detention of the applicant is not necessary and he can be granted bail on certain terms and conditions.

4 Hence, I pass the following order:

:: ORDER ::

- (I) Criminal Bail Application No.3409 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.273 of 2018, registered with MHB Colony 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 not approach the victim and the complainant, till the conclusion of trial and shall not tamper with the prosecution evidence;
- (iv) Applicant shall stay out of the jurisdiction of MHB Colony police station, Mumbai;
- (v) Applicant shall furnish the place of his residence to the investigating officer, after his release on bail;
- (iv) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)