

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

CRIMINAL BAIL APPLN. NO. 2740 OF 2019

Arjun Bhau Toraskar

.... Applicant

V/s.

The State of Maharashtra

.... Respondent

....

Mr.Vikramsingh Parmar i/b. Mr.Chirag R. Sonecha, Advcoate for the Applicant.

Ms.Veera Shinde, APP for Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 6, 2020

P.C.:

1 The applicant is seeking bail in Crime No. 235 of 2017 registered with Kurundwadi Police Station for offences punishable under Sections 376(2)(i), 452, 504 of the Indian Penal Code (“IPC”, for short) and Sections 4 and 6 of Protection of Children from Sexual Offences Act (“POCSO”, for short). The applicant was arrested on 24th October 2017. The First Information Report (“FIR”, for short) was lodged on the same day.

2 The First Information Report was lodged by the mother of victim on 24th October 2017. The complainant is a

widow having two minor children aged about 9 years and 12 years. The complainant is selling products on behalf of a company by visiting the residence of the customers. She leaves house at about 08.30 a.m. and returns home at about 08.30 p.m. The victim was studying in a Girls School in 4th standard. The son of the complainant is studying in 4th standard and he is residing in the hostel. The mother of the complainant is also working as house maid. The victim was used to be alone at home after returning from school. On 14th October 2017 at about 03.30 p.m., she received call from her neighbour Kausar that she wants to talk to her and she should return home early in the evening. At about 08.30 p.m. complainant returned home. Kausar told her that she had visited her house at about 12.30 noon. At she entered into the house she found that the accused and the victim were at home. The accused was sleeping on the body of the victim. After noticing her, the accused stood up. She inquired with the victim as to what is happening and she noticed that the undergarments of the victim were removed. The accused was provided meal tiffin by the mother of the complainant. Sometimes, he use to visit home to collect the same and was known to the family. The complainant took the victim in confidence and made inquiry with her as to what has happened. She disclosed that, the accused told her that he would give her chocolate and took her inside the house. He removed her undergarment and then made her sleep. He slept over her body and then he sexually assaulted her. The complainant made inquiries about the whereabouts of the accused, however, he could not be traced. On 24th October 2017, the complainant and her mother noticed the accused near S.T.

stand. They questioned him about the incident. He admitted his mistake and tried to run away from the place of incident. He was apprehended by them and taken to the police station. The First Information Report was lodged. The statement of the victim girl was recorded. Statements of witnesses were also recorded on completing investigation charge-sheet was filed.

3 The applicant preferred an application for bail before the Sessions Court, which was rejected by order dated 30th June 2018 and 16th December 2019.

4 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. There is no incident of sexual assault. The medical evidence do not support the prosecution case. There is delay of 10 days in recording the First Information Report. The applicant is in custody for more than two years. At the most, the applicant could be prosecuted for the offences under the Pocso Act. Considering the fact that he is in custody for a long period, he may be granted bail. There are no criminal antecedents against the applicant. The medical evidence do not support the prosecution case for offence under section 376 of Indian Penal Code.

5 Learned A.P.P. submitted that the statement of the victim who is aged about 9 years and 3 months cannot be brushed aside. She was alone at home. She was subjected to sexual assault by the applicant. The applicant is aged about 45

years. The statement of Kausar, who is the neighbour of the victim supports the prosecution case. The applicant was not traceable after the incident and he was apprehended by the complainant and her mother. The victim used to be home alone as the complainant used to go out for work. The complainant, and Smt. Kausar had no enmity with the applicant to implicate him in the crime. The offence is of serious nature.

6 I have perused the documents. The victim is a minor girl aged about 9 years and 3 months. She used to be alone at home. The mother of the victim was earning her livelihood by selling goods by visiting the residence of customers. The grandmother of the victim was also working as maid. The accused was provided the tiffin and sometimes used to visit the house for collecting the tiffin. The witness Smt.Kausar has stated that on 14th October 2017 she visited the house of the victim and she found that the accused was lying on the victim. The undergarment of the victim was removed. The victim then narrated the incident to her. Victim also narrated incident to her mother. The statement of the victim was recorded and she has narrated the manner in which she was sexually assaulted. On the basis of the medical evidence, it cannot be said that the incident had not occurred. The victim has stated that the accused was trying to penetrate her. It is pertinent to note that, the accused is aged about 45 years and the victim was a minor girl. The delay of 10 days has been explained in the First Information Report. In these circumstances, no case for grant of bail is made out.

:: ORDER ::

- (i) Bail application No. 2740 of 2019, is rejected and disposed of accordingly;
- (ii) Trial is expedited.

(PRAKASH D. NAIK, J)