

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

BAIL APPLICATION NO. 72 OF 2020

**Mr. Mohammed Tafjil s/o.
Mohammed Abdul Salam Hussain** **...Applicant**

Vs.

The State of Maharashtra **...Respondent**

**Mr. Tariq Khan for Applicant
Smt. Rutuja Ambekar, APP for the State/Respondent**

CORAM : PRAKASH D. NAIK, J.

DATE : 09th MARCH, 2020

PC:-

1. This is an application for bail in C.R. No. 244 of 2019 registered with V.B. Nagar Police Station, Kurla West for the offences punishable under Sections 377, 506 of Indian Penal Code r/w. Sections 4,8 and 12 of POCSO Act.
2. The First Information Report was lodged on 29th September, 2019 by the father of the victim boy.
3. The case of the prosecution is that a victim boy was aged about 12 years at the time of incident. On 28th September, 2019, the victim boy was crying and the complainant inquired with him the reason of crying. At that time, he told that in May, 2016 in the afternoon, the

Applicant, who was their neighbour had told him to bring water and he was forcibly taken in the motor vehicle and subjected to unnatural sex. He was threatened. The victim then showed him the accused and the complaint was lodged on 29th September, 2019. The statement of the victim was recorded, in which , he has narrated the incident. The statement of the mother was also recorded on 29th September, 2019. The Applicant was arrested on 29th September, 2019. On completion of the investigation, the charge-sheet is filed.

4. The learned counsel for the Applicant submits that the applicant has been falsely implicated in this case. There was a quarrel between the Applicant and the Complainant on account of throwing garbage just before lodging of the FIR. In view of the quarrel, false FIR has been lodged. The learned counsel submits that there is a delay of about more than three years in lodging the First Information Report. The learned counsel submits that there are no criminal antecedents against him. Applicant is in custody from the date of his arrest i.e. on 17th December, 2019.

5. Learned APP submits that the victim was disturbed on account of the said incident. The statement of the mother shows that the victim was in disturbed state of mind and he used to wake up in the night. Learned APP pointed out the statement of one of the witness Mallesh Rikappa Talkoti, recorded on 30th September, 2019,

who is the neighbour. He has stated that the accused was unknown to him since last four years. Since two years, he was not residing in the vicinity and he has returned on 20th September, 2019. Since the accused has returned back to the said area, the victim realized the fact and made a complaint to his father on 28th September, 2019.

6. I have perused the First Information Report and statements of the other witnesses. The alleged incident occurred in May, 2016. It is difficult to accept that the victim has not told this fact to his parents. The statement of the neighbour refers to arrival of the accused in the area on 20th September, 2019. However, in the statement of the complainant, or in the statement of victim and his mother, there was a reference about the accused not residing in the area since two years and that he returned back on 20th September, 2019, due to which the victim was disturbed and narrated the incident to his father on 29th September, 2020.

7. The Applicant is in custody since September, 2019. In the circumstances, bail can be granted to the applicant on certain terms and conditions. Hence, following order:

ORDER

- (i) Bail Application No. 72 of 2020 is allowed.
- (ii) The Applicant be released on bail in connection C.R. No. 244 of 2019 registered with V.B. Nagar Police Station, Kurla West,

which is subject matter of POCSO Spl.Case No. 700 of 2019 pending before the Special Court, POCSO, on furnishing P.R. Bond in sum of Rs.25,000/- with one or more local sureties in the like amount.

- (iii) The Applicant shall stay out of the jurisdiction of V.B. Nagar Police Station till conclusion of the trial.
- (iv) The Applicant shall furnish details of his residence to I.O. after he is released on bail.
- (v) The Applicant shall regularly attend the trial court on every scheduled date, unless exempted by the Court.
- (vi) Bail application is disposed of accordingly.

(PRAKASH D. NAIK, J.)