

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

CRIMINAL BAIL APPLICATION NO. 127 OF 2020

Akash Raju Thorat

...Applicant

Versus

The State of Maharashtra

...Respondents

...

Mr. Dheeraj Panchange a/w Mr. Vinod Garud Advocates
for the Applicant.

Mrs. Rutuja Aambekar, APP for Respondent-State.

Mr. A.M. Sonawane, Vitthalwadi Police Station.

...

CORAM : SANDEEP. K. SHINDE, J.

DATE : 03rd FEBRUARY, 2020.

P.C.

Heard.

1. It is an application under Section 439 of Code of Criminal Procedure, 1973 ("Cr.P.C." for short).

2. Applicant is seeking enlargement on bail in Crime No. I - 234 of 2018 corresponding Atrocity Special Case No.152 of 2018 registered with

Vitthalwadi Police Station for the alleged offences punishable under Sections 376(2)(j), 376(3), 506 of the Indian Penal Code, 1860 ("IPC" for short) and Section 4, 8 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short).

3. This application was heard by this Court on 11.04.2019 and liberty was granted to file a fresh application for bail before the trial Court, in case the trial did not commence within a period of six months. In view of this, the applicant had filed an application before the learned Sessions Court for bail however, same came to be rejected.

4. Learned APP on instructions, submits till date the charge has not been framed.

5. I have perused the final report and heard the respective counsels.

6. The victim at the time of incident, was 13

years old; whereas the applicant was 20 years old. Victim's statement has been recorded under Section 24 of POCSO alongwith under Section 164 of Cr.P.C. Prosecution has relied on her statement and also the medical report which prima facie, suggests that the victim was subjected to penetrative sexual assault.

7. Prima facie, the complaint and statement of the victim suggests that the victim had voluntarily gone to the house of the applicant on the pretext, of attending the school. It is prosecution's case that on the given date since the victim did not reach the school, someone had called victim's mother and reported this fact. Thereupon in search of her daughter, she went to the house of her daughter's friend Nikita but it appeared that Nikita had also not reported to the school. The victim's mother therefore, went to the house of the complainant, cousin of Nikita, who was also living in the neighborhood of victim. She later found that her daughter was confined in the applicant's house and was subjected to penetrative

sexual assault. Accordingly, she filed report with police.

8. Be that as it may, the evidence suggests the victim had voluntarily gone to the complainant's house at 07:00 am. and had chosen to remain in his company till 11:30 am. where twice she was subjected to allege penetrative sexual assault. Though the victim said in her complaint that while she tried to escape from applicant's company and 'raised hue and cry' the applicant gagged her mouth. Prima facie, the evidence on record suggests otherwise. Had victim raised cries for help some one from the neighbouring houses, would have stopped the respondent and helped her, since the place of incident, was thick locality surrounded by houses. Additionally, the medical report of the victim does not suggest that she had offered resistance to the applicant inasmuch as no injuries/bruises were found on the person of the victim.

9. Applicant is in custody since 2018 and at the relevant time he was 20 years old, living in neighborhood of the victim. Though the statement of Nikita (victim's friend) has not been recorded, evidence suggests victim was friendly with the applicant. The conduct of the victim cannot be overlooked inasmuch as the evidence suggests she had voluntarily chosen to remain in the applicant's company for nearly our hours. That even otherwise, the incriminating materials sent for the forensic report was returned by the laboratory having found it was not sealed by the Investigating Officer.

10. Additionally, when this application was heard for the first time, this Court had granted liberty to the applicant to apply for bail if the trial did not commence within six months. Admittedly, the investigation is over and though the charge-sheet has been filed till date the charge has not been framed. In my view, a case is made out for releasing the applicant on bail by imposing conditions to secure his presence

for the trial which is not likely to commence in the near future and hence the following order.

ORDER

(i) The applicant is directed to be released on bail on executing P.R. Bond for the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall not live in the jurisdiction of the Vitthalwadi Police Station till the trial is concluded;

(iii) The applicant shall report to the Central Police Station, Ulhasnagar once in a month on 2nd Monday of every month commencing from 10th February, 2020 between 11:00 am. to 01:00 pm;

(iv) The applicant shall furnish the particulars of his residential address as well as permanent address and contact details to the investigating officer within seven days from the date of his

release on bail;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

11. The application is allowed in the aforesaid terms and disposed off.

12. It is made clear that observations made hereinabove shall be construed as an expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP. K. SHINDE, J.)