

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

CRIMINAL BAIL APPLICATION NO. 351 OF 2020

Basantlal Sukhadeo Kori

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Diwakar Dwivedi a/w. Dheeraj Dwivedi i/b. Pankaj Dwivedi for Applicant.

Mr. Swapnil S. Pednekar, APP for State/Respondent.

CORAM :SARANG V. KOTWAL, J.

DATE :25th SEPTEMBER, 2020

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.397 of 2019 registered with Kurla Police Station, on 21/09/2019, under sections 377 and 506(2) of the Indian Penal Code, as well as, sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act ('POCSO' for short).

2. The FIR is lodged by the victim himself. He is 16 years of age. He has described his state of poverty and what miserable

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life he was leading. He is living on streets. He was introduced to the present applicant who was a bus driver. The FIR mentions that, initially the applicant took him to feed him meals. Thereafter he was taken to an abandoned bus. The applicant told him that, he was residing in the same bus. The FIR mentions that the applicant forcibly had anal sexual intercourse with the victim. The victim was threatened. After some time the applicant left the place. The victim was not in a position to protect himself, therefore, the applicant regularly used to take advantage of this situation and used to force the victim to indulge in various sexual activities including forcible sexual anal intercourse. Ultimately, the victim gathered courage and informed the police about this fact and thereafter this FIR was lodged.

3. Heard Shri. Diwakar Dwivedi, learned counsel for the applicant and Shri. Swapnil Pednekar, learned APP for the State.

4. Learned counsel for the applicant invited my attention to the medical certificate, which does not show any injury on the victim. Therefore, he submitted that, it was a case of consensual anal intercourse. He submitted that, in the entire charge-sheet

there is nothing to support the contention of the victim that, he was 16 years of age. The police have not collected any evidence to that effect. He submitted that, in such cases, where there is consent and where the age of victim is not determined, possible sentence would be lesser. The applicant is in custody since 21/09/2019 and, therefore, he deserves to be released on bail.

5. Learned APP opposed this application and submitted that the charge-sheet and other material has sufficiently corroborated the victim's case.

6. I have considered these submissions. At this stage, there is no reason to doubt that the victim was 16 years of age. Though, police do not have any documentary evidence, but looking at the background of the victim and the fact that the victim was living on streets, it was possible that police could not have gathered that documentary evidence. However, this should not matter because entire FIR clearly describes the incidents when the victim was subjected to such forcible acts against his wish. The FIR is lodged after the victim had gathered sufficient courage, therefore, it could not be said that it is delayed. At this stage, there

is sufficient material against the present applicant. The allegations are quite serious. Therefore, I am not inclined to grant bail to the applicant.

7. The application is rejected.

8. Learned counsel for the applicant prays for expediting the trial. The applicant would be at liberty to make such application before the trial court and the trial court shall deal with such an application for expeditious hearing of the trial.

(SARANG V. KOTWAL, J.)