

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

BAIL APPLICATION NO. 1984 OF 2019

Lingya @ Ajay Badukya @ Kundlik Bhosale .. Applicant

Vs.

The State Of Maharashtra .. Respondent

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Mr. Tushar N. Sonawane, Advocate for Applicant.

Smt. Geeta P. Mulekar, A.P.P. for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 08th JANUARY 2020

PC.

1 This is an application for bail in connection with C.R. No. 387 of 2018 registered with Atpadi Police Station, Sangli for offences punishable under Sections 376 (f) 376 (2) (j), 342, 506 of the Indian Penal Code (for short "IPC") and Sections 4, 5 (n), 5 (g), 6, 17 of Protection of Children from Sexual Offences Act, 2012 (for short of "POCSO").

2 The case of the prosecution is that, the victim is a minor. First Information Report (for short "FIR") was lodged on 29th December 2018. The Complainant is cousin of victim. It is alleged that, about two months ago, mother of complainant (Chameli) had taken victim along with her under pretext that she has to give water and food to Vikas Kaka and Lingya Kaka. She

returned home in the morning. Since the victim slept for longtime, the complainant inquired with her. She informed that, her aunt Chameli (mother of complainant) took her to lodge. Vikas Kaka and Lingya Kaka were sitting in the room. Vikas Kaka touched her inappropriately. Chameli threatened her. Vikas slept with her nude. Thereafter, Lingya slept with her. The complainant alleged that, her mother had threatened her. The father of complainant is in jail and her brother is also in jail. The mother of complainant (Chameli) eloped with Lingya. Hence, she lodged complaint after two months. Statement of victim was recorded on 28th December 2018. She reiterated what she had stated to complainant. The victim stated that since her aunt Chameli had threatened both of them kept silent. Since uncle Daulusha came home and Chameli has eloped with Lingya she had come to police station to lodge complaint with complainant.

3 The statement of victim was recorded on 07th January 2019 under section 164 of Code of Criminal Procedure. In that statement the victim had stated that she was taken to Satarkar lodge at Atpadi by Vikas and Lingya and both committed sexual intercourse. Thereafter, both accused had dropped her home. Her aunt Chameli went to attend date. Her uncle Daulusha

Pawar was in jail. She told Chameli and her sister that the above persons had raped her. She further stated that, the accused again took her to some place and repeated the act. In the first statement the victim had implicated her aunt (mother of complainants). In the statement under Section 164, she exonerated her. The other accused allegedly took her to lodge. In the first statement victim has not specifically stated that accused had subjected her to sexual intercourse. She also referred to second incident of sexual intercourse, which was not referred in previous statement. There is major variation in subsequent statement.

4 Statement of complainant was also recorded under Section 164 Code of Criminal Procedure on 07th January 2019. In the said statement she has exonerated her mother Chameli. She stated that, victim had informed her that she was sexually assaulted by Lingya and Vikas. The fact that, victim was taken to lodge by Chameli and she was forced to sleep with other accused is omitted. She also referred to second incident of sexual assault by accused. In the FIR the complainant had stated that, delay in lodging FIR was due to fact that her mother (Chameli) had

threatened her and at the time of lodging FIR she has eloped with Lingya. Since in subsequent statement, she has exonerated her mother, the explanation for delay in lodging FIR after two months is non-existent. There is substantial variation in FIR and subsequent statement under section 164 of Code of Criminal Procedure.

5 Learned Advocate for applicant submitted that complaint is false. The complainant and victim had given contradictory versions in their statements. Learned APP submitted that victim was minor aged around 13-14 years. Specific overt act has been attributed to applicant.

6 The prosecution case proceeds on the basis that, the mother of the applicant had taken victim to the lodge and victim was sexually assaulted by accused. However, in subsequent statement the victim and complainant had changed their version, whereby Chameli is exonerated. The statement of lodge owner was recorded during the course of investigation. He had stated that, the victim had never visited his lodge. It is the case of the prosecution that, the victim was subjected to sexual assault in

the Satarkar lodge. The First Information Report was lodged after two months from the date of incident. In view of variation in the statement and the circumstances stated herein above doubt is created about prosecution version. The applicant is in custody from 3rd January 2019. Learned counsel appearing for the applicant, on instructions submits that, there are no criminal antecedents against applicant. Hence, bail can be granted to the applicant.

:: O R D E R ::

- (i) Bail Application No.1984 of 2019, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 387 of 2018, registered with Atpadi Police Station, Sangli on furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report the concerned Police Station, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further order;
- (iv) Applicant shall not approach the victim. He shall stay out of the jurisdiction of Atpadi Police Station till the

conclusion of the trial

(v) Applicant shall furnish details about the place of his residence to the Investigation Officer after he is released on bail.

(vi) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)