

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2020 OF 2019

Mahesh @ Vijay Kallapa Sawant, Age 38 years,
Occ.Service, R/o.4, Shivswarup Nagar,
R.K.Nagar, Pachagon, Tal.Karveer, Dist.Kolhapur.
(Presently lodged in jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Shailendra Pendse for applicant.
Mr.H.J.Dedhia, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th January 2020

PC :

1. This is an application for bail in CR No.484 of 2018 registered with Karveer Police Station, District Kolhpaur, for offences under Sections 3,4,6,7,8,11(3),12 of Protection of Children from Sexual Offenses Act, 2012 and under Section 376(3) of Indian Penal Code. The applicant was arrested on 13th December 2018.

2. The FIR was lodged on 13th December 2018 by the sister of victim. It is alleged that the mother of complainant and the victim had performed second marriage. The applicant is step father of the victim and complainant. One month ago the victim had informed the complainant that the applicant has been subjecting her to sexual assault since last four years. The victim is a student of 10th standard and aged about 15 years. The manner in which she was sexually assault, is mentioned in the FIR. It is also alleged that the victim was threatened by the applicant-accused. The incident was also narrated

to aunt of the victim. The mother was also informed about the incidents. The complainant accompanied the victim to the school on 12th December 2018 which was a result day. In the school a lady officer was counseling the students. The incidents of sexual assault were narrated to them. Before that the administrator of the school was also informed about the sexual assault meted out to the victim. Pursuant to that statement of the victim was video recorded. The statement of victim was also recorded u/s 161 of Cr.P.C. She has referred to the acts committed by the accused. The statement of the mother of the victim was also recorded, which supports the version of complainant and the victim. Subsequently the victim was medically examined. The statements of complainant and victim were recorded u/s 164 of Cr.P.C.. In the said statements, however, they have exonerated the applicant. On completing investigation charge sheet was filed.

3. Learned counsel for applicant submitted that the applicant has been falsely implicated in this case. The applicant has not subjected the victim to sexual assault. The applicant is a disciplinarian and was trying to be strict with the complainant and victim, which was not liked by them and hence the false complaint was lodged at their instance. The statements of complainant and victim recorded u/s 164 of Cr.P.C, however, exonerate the applicant. He further submitted that the affidavits were filed by the complainant, victim and their mother, which exonerate the applicant. The applicant is in custody for a period of about one year. Learned counsel relied upon decision of Madras High Court in case of **N.Chandramohan Vs. The State (Criminal O.P.No.21414 of 2019)**, dated 20th August 2019 and contended that the proceedings under the provisions of POCSO Act

are quashed by the Madras High Court on the basis of the statement of the victim recorded u/s 164 of Cr.PC. It is submitted that there is delay in lodging the FIR.

4. Learned APP submitted that the victim and the complainant were apparently influenced to change their versions. The statement u/s 161 of Cr.PC attributes serious role of outraging modesty and aggravated sexual assault to the applicant-accused. Apart from the statements of victim, complainant and their mother, the statements of other witnesses support the prosecution case. The statement of the victim was also video recorded wherein she has attributed serious acts of sexual assault to the applicant. Merely on the basis of affidavits and the changed version, the applicant may not be granted bail.

5. I have perused the documents annexed to this application. The charge sheet is filed. The victim is 15 year old girl. In her statement she has referred to aggravated penetrative sexual assault committed by the applicant. She has also stated that the accused used to touch her improperly and outraged her modesty. Due to fear she kept mum. The victim and her sister were residing with their mother and applicant. The complainant and victim approached the trustee of the school Mr.Patil and they were referred to the counselor Jyoti Bavale. The victim narrated the incident to the counselor and other witnesses. Thereafter all of them approached Police. The statement of the victim was recorded. It was also videographed. In the statement u/s 161 of Cr.PC, role of sexual assault has been attributed to the applicant. The complainant has also supported version of the victim. Mother's statement was also recorded. The statement of

B.M.Patil, Legal Aid Officer and other witnesses were recorded, which is in consonance with the version of victim and it is also fortified that the victim has lodged the complaint and attributed role to the applicant. The statement u/s 164 of Cr.PC was, however, recorded on 18th December 2018. In the said statement the complainant had stated that the accused was not giving them freedom and imposing restrictions and to punish him false statement is made to the Police. The victim has also made similar statement. During the hearing of the application for bail before the Sessions Court, the mother of the victim filed an affidavit dated 11th March 2019 stating that the accused is her husband she she has no objection for grant of bail to him. The complainant also filed affidavit dated 11th March 2019 stating that she has no objection for grant of bail to the applicant. The affidavit of victim dated 25th May 2019 was filed in which she has stated that her father is in jail, which has created hardships to the family. She had stated correct version in her statement u/s 164 of Cr.PC. It is pertinent to note that on the date of swearing the said affidavit, the victim was minor aged about 16 years.

6. Although the applicant relies on the said affidavits, the same cannot be considered in the light of version of the complainant, victim and other witnesses in their statements u/s 161 of Cr.PC.. The complainant and the victim had given different versions in the statements u/s 164 of Cr.PC. However, considering the factual aspects, as stated above, and more particularly the fact that the incidents were informed to the trustee of the school, the counselor, the teacher and also considering the fact that the statements were recorded which were also video recorded, the submissions of learned

counsel for applicant cannot be accepted. The incidents as appearing in the first statement of the victim depict that the victim was sexually assaulted. It was aggravated sexual assault. The allegations are of serious nature. Hence, bail cannot be granted to the applicant. Accordingly, Criminal Bail Application No.2020 of 2019 is rejected. Trial is expedited.

(PRAKASH D. NAIK, J.)

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