

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

CRIMINAL BAIL APPLICATION NO. 2838 OF 2019

Anil Bharat Salunkhe

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Priyal G. Sarda, Advocate for the Applicant.

Smt. A. A. Takalkar, APP for the Respondent – State.

Mr. R. V. Malegave, API, Chatushrungi Police Station, Pune City,
Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 5th MARCH, 2020

PC :

1. The applicant is arrested on 12th April, 2019 in connection with C.R. No. 294 of 2019 registered with Chatushrungi Police Station, Dist. Pune for offences punishable under Sections 363, 354, 354(A), 376 r/w Section 34 of Indian Penal Code and Sections 3, 4, 5, 6, 8, 12, 16 & 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. The FIR was lodged by the father of victim. The victim is aged about 17 years, 5 month. In the FIR it was alleged that, on 19th March, 2019 the victim had left house for attending class of I.T.I. at Aundh, Pune and did not return home. On 20th March, 2019, father of victim lodged complaint under section 363 of Indian Penal

Code. The victim was traced on 11th April, 2019 and brought to police station with Vishal Sudarshan Jadhav and Asif Mulla. Statement of victim was recorded on 12th April, 2019. She stated that she likes Bharat Jait. She used to call him from phone of different friends. After hearing her voice, Bharat used to disconnect call. On 19th March, 2019 while returning home, she made call to Bharat from phone of Nikhil Bhirud. After some time mother of victim called from Bharat's phone. On hearing her mothers voice, she cut the call. She apprehended that Bharat must have made complaint to her mother. Hence, she did not return home. She went to Aalandi and met her friend Asif Mulla and told him to make arrangement for her stay and job. Asif Mulla took her to S.R. lodge at Gudulgaon. She stayed there for one night on 20th March, 2019. her friend Sudarshan Jadhav working at S.R. lodge took her to Warje Marwaidi in the house of his friend Vishal Sonwane. Sudarshan told that they are married and requested Vishal to look for job and room. They stayed in the house of Vishal with his parents and brother on 20th March, 2019 and 21st March, 2019. On 22nd March, 2019 Sudarshan took her to house of Anil Salunkhe (Applicant) at Dalvi Wada, Nanded Phata, Pune. Anil was friend of Vishal. He was alone in house from 22nd March, 2019, victim and Sudarshan Jadhav stayed in house of Anil Salunkhe (Applicant) for 2 to 3 days. Sudarshan tried to get

physical with victim. She informed about it to Anil Salunkhe and Vishal Sonwane. Applicant told Sudarshan to leave house. Vishal visited house of Anil Salunkhe on two-three occasion. He tried to get intimate with her. She told about it to anil Salunkhe. He restrained Vishal from visiting house. Anil was alone since his wife had gone to her parents. Anil Salunkhe (Applicant) developed intimacy and had physical relationship on two to three times. On 11th April, 2019 Police arrived and took them in custody.

3. The applicant had preferred application for bail before the Sessions Court which has been rejected by order dated 31st August, 2019.

4. The contention of the applicant is that the applicant has been falsely implicated in this case. There is no evidence to show the involvement of the applicant in the crime. The victim had voluntarily left her residence. The statement of the victim do not indicate that the applicant had subjected her to forcible sexual intercourse. The history provided by the applicant during her medical examination mentions that the physical relationship with the applicant was by consent.

5. Learned APP submitted that the statement of the victim was recorded under Sections 161 and 164 of Cr.PC. It is submitted that

the statement under Section 164 was not available which has been filed before Trial Court. It is submitted that the victim was in love with another person and not the applicant. The applicant is married person which is apparent from the fact that the victim had stayed with him when wife of the applicant was not in the house. The relationship was not consensual.

6. On perusal of the FIR and statement of witnesses including statement of victim it can be seen that the victim had left the house under the fear of her mother. She told the accused to make arrangement for job of and residence. She was introduced to another accused and lastly to the applicant. She stayed in the house of the applicant for about 3 days. Statement of the victim refers to physical relationship with the applicant on two to three occasion. However, the tenor of the statement do not indicate that the applicant had forcible sexual relationship with her. The victim is girl aged about 17 ½ years which is age of understanding. In the history provided by victim during medical examination, it is stated that there was sexual intercourse two times with applicant by consent. Considering the facts and circumstance of the case, case for grant of bail is made out.

7. Hence, I pass the following order :

ORDER

- i) Bail Application No. 2838 of 2019 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 294 of 2019 registered with Chatushrungi Police Station, Dist. Pune 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 concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till further order.
- iv) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)