

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

CRIMINAL BAIL APPLICATION NO. 3125 OF 2019

Durgesh Ishwar Kushwaha ... Applicant
Age : 24 Yrs. Occ : Services
Indian Inhabitant,
R/at H.No.461, Gram : Sabaya
Thana-Kasaya
Dist : Kushi Nagar, State : Uttar Pradesh
(Presently lodged at Thane Central Prison)

Versus

The State of Maharashtra ... Respondent

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Ms. Deepa Devadiga, Advocate for the Applicant.
Ms. A. A. Takalkar, APP for the Respondent – State.
Mr. Ravikant Sawant, Kandivali Police Station, Mumbai Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th DECEMBER, 2020.

PER COURT:

1. The applicant is arrested in connection with C.R. No. 203 of 2019 registered with Kandivali Police Station, Mumbai for offences punishable under Sections 363, 342, 376(2)(n), 506(2) of Indian Penal Code (for short 'IPC') and Sections 4, 8 & 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). The applicant was arrested on 14th April, 2018.

2. The case of the prosecution as appears from the statement of victim dated 14th April, 2019 is that, she was aged about 16 years & 7 months at the time of incident. On 30th March, 2019,

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she met accused. Thereafter, both of them boarded auto rickshaw. Subsequently, they boarded local train and went to Nalasopara. Both of them occupied room at Nalasopara. They stayed together. In the night the accused had forcible sexual intercourse with her. She was threatened. She continued to stay in the room for another Two days. Again there was physical relationship between them. Thereafter, she accompanied the accused to Surat and subsequently to Kolkatta. On 3rd April, 2019 they alighted at Hawda Station. The relatives of the victim were present at the Station. The accused saw them and ran away from the station. FIR was lodged.

3. It is submitted that, the applicant is in custody for substantial period. The relationship was consensual. The victim had accompanied the accused. Subsequently, she lodged the complaint and changed her version. There are no criminal antecedents against the applicant.

4. Learned APP submitted that victim was minor at the time of incident and her consent is immaterial. The victim had stated that, she was sexually assaulted by the accused. The applicant has no permanent place of residence in Mumbai. He is permanent resident of Uttar Pradesh. If he is released on bail he may not be available for trial.

5. Learned counsel for applicant on instructions submits that, in the event he is granted bail, he would abide by any condition imposed by this Court. He would reside with his brother Mr. Govind Ishwar Khushwaha. His brother is willing to file an affidavit that the applicant would reside with him during pendency of trial.

6. On perusal of statement dated 14th April, 2019, it appears that the victim had accompanied the accused on 30th March, 2019 and both of them stayed together at Nalasopara. There was physical relationship between them. Subsequently, both of them boarded train and went to Kolkatta. The victim girl was aged about 16 years & 7 months at the time of incident. Considering the factual aspects of the matter and the fact that, he is in custody from the date of arrest, on certain terms and conditions bail can be granted to applicant. Hence, I pass following order.

ORDER

- (i) Bail Application No.3125 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 203 of 2019 registered with Kandivali Police Station, Mumbai on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) The brother of the applicant namely Mr. Govind Ishwar Khushwaha shall file an affidavit at the time of execution of bail bond before the trial Court stating that the applicant would reside with him and the applicant shall comply with the said affidavit/undertaking.

(iv) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

(v) The applicant shall not leave jurisdiction of State of Maharashtra without prior permission of the trial Court.

(vi) Application stands disposed of accordingly.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)