

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

CRIMINAL BAIL APPLICATION NO.3176 OF 2019

Rajesh Shivkumar Saroj
Aged 19 Years, Indian Inhabitant,
residing at Room No.306, Jay Bharat Society
Lalgi Pada, New Link Road,
Kandivali, Mumbai
(At present is in Thane Central Prison) ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Anjali Patil, Advocate for the Applicant.
Ms. A. A. Takalkar, APP for the Respondent – State.
Mr. Ravikant Sawant, P.S.I. Kandivali Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 16th DECEMBER, 2020.

PER COURT:

1. The applicant is seeking bail in C.R. No. 61 of 2019 registered with Kandivali Police Station, Mumbai for offences punishable under Sections 363, 328, 376(D) r/w Section 34 of Indian Penal Code (for short “IPC”) and Sections 4, 6, 8, 10 & 12 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’).

2. The prosecution case is that, on 24th January 2019 the complainant found that, her daughter (victim) was not present in the

house. Her neighbours informed that the victim had gone towards Rose Garden with two boys. The victim was traced on 27th January, 2019. She was found under intoxication. Her statement was recorded. In her statement she stated that, the applicant and the co-accused had visited her house on 24th January, 2019 at about 7.30 p.m. She was informed that, she was told to join them for birthday party which will be attended by other friends. She joined them. She sat on their motorcycle and proceeded with them. In the whole night, they were roaming at Aksa beach. On 25th January, 2019 she visited her friend's house and after having meal again left with accused. On 26th January, 2019, she went with the accused at Aksa beach and the forest area. On 27th January, 2019 the applicant brought liquor which was consumed by them. The victim was given liquor by mixing it with cold drink. On the same day co-accused subjected her to sexual intercourse. The applicant was present at the scene of offence. The applicant was arrested on 28th January, 2019. On completing investigation, charge-sheet was filed.

3. Learned advocate for the applicant submitted that the applicant is in custody for a substantial period of time. The victim had volunteered to be with accused. The role of sexual assault was attributed to co-accused. The test of alcohol of victim was negative.

There is no proof of birth on record. There is no evidence to show that the victim was minor at the time of incident.

4. Learned APP submitted that the victim was aged about 14 years at the time of incident. The letter issued by Headmistress of the school mentions her date of birth which was given after verifying the register from the school. The applicant had visited the house of the victim and induced her to join them. She was minor. The applicant had brought liquor. There are criminal antecedents against the applicant.

5. The prosecution case is that, the victim had joined the applicant and the co-accused on 24th January, 2019. She was with them till 27th January, 2019. She had accompanied them to Aksa beach and other areas. The alcohol report is negative. The role of sexual assault is attributed to another accused. The applicant is in custody almost for a period two years. The applicant is on bail in three other cases registered against him. Considering these circumstances case for grant of bail is made out. Hence, I pass the following order.

ORDER

- (i) Bail Application No.3176 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in

connection with C.R. No. 61 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 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;

(iv) The applicant shall not approach the victim or her relatives and shall not tamper with the evidence in any manner.

(v) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of Eight Weeks in lieu of surety.

(vi) Application stands disposed of accordingly.

6. 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.)