

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

BAIL APPLICATION NO.226 OF 2020

Mohd. Faiyaz Fakir Mohd.
Shaikh Alias Baloch

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

Mr.Vikas K. Singh, Advocate for Applicant.

Mr. S. S. Pednekar, A.P.P. for the State-Respondent.

API Abhijit Jadhao, Jogeshwari Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th JUNE, 2021

PC.

1. Applicant is arrested on 16.10.2018. The First Information Report was lodged on 05.10.2018 by the father of the victim. The victim boy is aged about 13 years at the time of incident. It is alleged that victim boy was sexually assaulted by the accused during the period of April 2018 to 02 October 2018.

2. The statements of victim boy were recorded under Section 161 as well as 164 of Cr.P.C. Statements of other witnesses were recorded and charge-sheet was filed.

3. Learned counsel for the applicant submitted that on account of dispute between both the families, false FIR has been

registered against the applicant. Although the alleged incident had occurred from April 2018, FIR was registered on 02.10.2018. There is no independent evidence to support the case of the prosecution. The victim is tutored by the father. There are no injuries to substantiate the charge of sexual assault. There is variation in the statement of the victim recorded under Sections 161 and 164 of Cr.P.C. The applicant is in custody for a period of 2 years and 8 months. There is no progress in the trial, even charge has not been framed. The applicant is young boy having no criminal antecedents.

4. Learned APP submits that the version of the victim cannot be disbelieved. Complicity of the applicant is disclosed. Case is due for framing charge on 05.07.2021. The role has been attributed to the applicant by the victim child in both the statements. On instructions from the Officer present in the Court it is submitted that intimation has been given to the victim/ complainant.

5. I have perused the documents on record. The alleged incident had occurred between April 2018 to October 2018,

apparently FIR was registered on 05.10.2018. The Medical Examination report indicates that there was no evidence of any fresh injury over the body of the victim. There was no evidence to damage, stain or foreign body. There were no signs of use of force and final opinion is reserved pending availability of FSL report. The statement of the victim was recorded under Section 164 of Cr.P.C. It does not refer to the place of incident and the alleged threats issued to him. Learned APP submitted that the CCTV footage refers to the fact that the applicant, victim and other children had entered into shop premises of the applicant. However, the statements of other child witnesses were not recorded. It is noted that the applicant is in custody for two years and eight months. Considering the factual aspects of this matter, further detention of the applicant is not necessary. Case for grant of bail is made out.

ORDER

- (i) Bail Application No.226 of 2020 is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R. No. 149 of 2018 registered with Jogeshwari Police Station 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 Meghwadi Police Station, once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further orders;

(iv) Applicant shall not tamper with the evidence and shall not approach the victim or any other witnesses;

(v) Applicant shall not enter the jurisdiction of Jogeshwari Police Station till the conclusion of trial;

(vi) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of 8 weeks in lieu of sureties.

(vii) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)