

PMB

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

BAIL APPLICATION NO.260 OF 2020

William Rajkumar Chaudhary .. Applicant
vs.

The State of Maharashtra .. Respondent

Mr. Nilesh Pandey a/w Priyanka Dubey a/w Mr. Sameer Vispute
a/w Mr. Bipin Tiwari I/b. Equajuris for the Applicant.

Smt. M.R. Tidke, APP for the State.

Police Inspector Bhopale now attached at Bangur Nagar Police
Station is present.

CORAM : M.S.KARNIK, J.

DATE : OCTOBER 4, 2021

P.C.:-

Heard learned counsel for the Applicant.

2. This is an application for bail filed by the Applicant in respect of an offence punishable under Sections 376(2)(n), (1) and 506(II) of Indian Penal Code registered as C.R. No.230 of 2019 of the Santacruz Police Station.

3. The FIR is registered by the mother of the victim. The FIR is dated 20.05.2019. The date of the incident is 18.05.2019. The

victim's biological age though is 33 years but her mental age as assessed by the medical expert is 6 years. On record there is a certificate issued by the Professor and Head of the Department of Psychiatry, Sion Hospital, Mumbai that the victim is suffering from major depressive disorder with moderate intellectual disability (I.Q. by KBI-35-40). On record there is also a note indicating the method of calculating the mental age. Applying the formula stated in the said certificate, the mental age as determined by Dr. Nilesh Shah, Professor and Head of the Psychiatry Department is indicated as 5.6 to 6.4 years.

4. The victim's mother who is the first informant, in her statement, has stated that the victim suffered an illness when she was 4 months old. Since then the victim is weak and is not able to use her right hand. She has difficulty in walking due to weakness in her right leg. It is alleged that the accused who resides in the same locality committed the offence alleged. It is alleged that when the victim had gone to a nearby shop to purchase fennel, the accused took her to his house and committed forcible sexual intercourse on 18.05.2019. It is when the victim complained of uneasiness and pain in her stomach, upon enquiries by her mother, that she disclosed about the incident on 19.05.2019. The accused had threatened the victim

not to disclose about the said incident to anyone. The victim stated that the accused had one year prior to the incident committed a similar act.

5. The statement of the victim was recorded on 20.05.2019 before the Investigating Officer in question- answer form when she has narrated the incident. On 12.07.2019 the victim's statement was recorded in question-answer form by a teacher who is teaching differently abled students in the Dilkhush Special School, Juhu, Mumbai. The statement of the victim was recorded with her help. The victim narrated the incident stating the involvement of the accused in connection with the said offence. Even the statement of the Teacher was recorded on 12.07.2019 narrating the disclosure made by the victim.

6. Learned counsel for the Applicant submitted that the Applicant is falsely implicated only because there are proceedings under the Rent Control Act filed by the relatives and even the complainant before the competent Court for eviction of the tenant from whom the Applicant is claiming. My attention is invited to orders passed by the Small Causes Court at Mumbai to show that the proceedings under the Rent Control Act are pending and that even the Applicant had filed an Obstructionist

Application. Further, it is submitted by learned counsel for the Applicant that the medical evidence on record does not support the case of the prosecution. According to him, there are no injuries on the person of the victim. In his submission, due to the civil dispute pending, that this false case is registered against him. He further submits that even the method for calculating the mental age is not correct and the same is to the detriment of the Applicant.

7. I have gone through the FIR, statements, medical evidence and other materials on record with the assistance of learned counsel for the Applicant and the learned APP. Apart from the statement made by the victim before the Investigating Officer implicating the Applicant, even the statement of the victim has been recorded under Section 164(5) of the Code of Criminal Procedure, 1973 before the Metropolitan Magistrate on 13.06.2019. The statement of the victim was then recorded in the question-answer form by the teacher working in a Special School wherein she narrates the incident indicating the involvement of the Applicant. The statement of the teacher has also been recorded wherein she states that the victim had disclosed to her the incident as recorded in question-answer form. The contention of learned counsel for the Applicant that

presence of the victim's mother at the time of recording her statement makes the victim's version doubtful and that the possibility of tutoring cannot be ruled out, cannot be a subject matter of consideration at this stage. It cannot be lost sight of the fact that the victim is suffering from major depressive disorder with moderate intellectual disability (I.Q. by KBI-35-40) and her mental age is opined as 6 years.

8. Considering the materials on record, I do not find this is a fit case to grant a bail. The Bail Application is rejected.

(M.S. KARNIK, J.)

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