

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

BAIL APPLICATION NO. 856 OF 2021

Kamal Padedaran ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Niranjan Mundargi a/w Mr. Suhail Shariff a/w Ms. Bhakti
Deshpande i/b. Mr. Sameer Shariff, Advocate for the Applicant.

Mr. H. J. Dedhia, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 23rd JUNE, 2021

PER COURT:

1. This is an application for bail. The applicant is arrested on 28th February, 2020 in connection with C.R. No. 89 of 2020 registered with Kandivali Police Station, Mumbai for offences under Section 376 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’) and Section 67 – B of the Information Technology Act, 2000.

2. The complainant has alleged that, somewhere in April, 2019, she got friendly with the applicant. According to prosecution, the age of complainant/victim is 17 years, 11 months. In June – 2019, the complainant/victim was taken to his residence by the

applicant and subjected to forceful sexual intercourse. The accused also promised that he would marry her. Again in November – 2019, the victim was called at his residence by the applicant and the act was repeated. The First Information Report (for short 'FIR') was lodged on 28th February, 2020. Supplementary statement of the complainant/victim was recorded on 6th April, 2020. In the said statement she alleged that the accused has threatened her that the video recorded would be made viral. Statements of other witnesses were recorded. On completing investigation, charge-sheet was filed.

3. Learned advocate for the applicant advanced following submissions :-

i) The applicant has been falsely implicated in this case. Assuming the allegations to be true, it was consensual relationship. The supplementary statement is contradictory to FIR.

ii) There is no evidence to support the version of the complainant/victim reflected in the supplementary statement. The mobile phone of the applicant was seized. Nothing incriminating was found in the cell phone.

iii) The complainant has relied upon false birth certificate. The case of the prosecution is that the date of birth of the victim

is 10th March, 2002. The said certificate was issued on 23rd November, 2017. The application was moved at the instance of the mother of applicant through R.T.I. to the Corporation and the reply was received that the said birth certificate was not issued by the said office of Corporation.

iv) There is inordinate delay in lodging FIR. Although the last incident had occurred in November – 2019, the FIR was lodged on 28th February, 2020.

v) In pursuant to the complaint lodged by the mother of applicant regarding the birth certificate of victim, her statement is recorded by the Police.

vi) The applicant is young boy. He has no criminal antecedents.

4. Learned APP submitted that the version of the complainant cannot be discarded at this stage. Specific overt act of sexual assault has been attributed to the applicant. Medical evidence supports the prosecution case. The submissions of learned counsel for the applicant can be considered during trial. There is nothing to infer that the relationship was consensual. The sexual assault was forceful. Victim was minor.

5. Intimation about the hearing of this application was given to the complainant/victim through concerned Police Station and report in that regard has been placed on record. The learned counsel for the applicant has also placed on record the notice along with copy of the application about the hearing of this application forwarded to the victim/complainant.

6. I have perused the FIR and all the other statements, documents which forms part of charge-sheet. From the tenor of the FIR it is apparent that the victim, who was allegedly aged about 17 Years, 11 months at the time of lodging FIR was friendly with the applicant and she was allegedly called at his residence wherein there was alleged incident of sexual assault. The first incident had occurred in June – 2019. She was again called by the applicant in November – 2019 at his residence and again the act was repeated. The FIR was however lodged after a period of about three months after occurrence of the last incident. The supplementary statement of the complainant/victim was recorded on 6th April, 2020, wherein it was alleged that there was threats of making video recorded by the applicant viral. It is pertinent to note that in the FIR the complainant has not alleged that the applicant had at any point of time recorded such video or such threats were issued by him. The cell phone of the applicant is seized by the Investigating authority. There is no material

on record to substantiate the allegations reflected in the supplementary statement. Learned APP however submit that the cell phone has been sent for forensic examination. The applicant was aged about 24 years at the time of incident. There are no criminal antecedents against him. The applicant has urged dispute about authenticity of the birth certificate of victim. It is also pertinent to note that, at the time of medical examination history provided at the instance of the victim was recorded. The said history is contrary to the version of the complainant in the FIR and supplementary statement. Considering the aforesaid circumstances, case for grant of bail is made out. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No. 856 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.89 of 2020 registered with Kandivali Police Station, Mumbai on executing PR. 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 three months 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 the relatives of the victim and shall not tamper with the evidence.

(v) The applicant is permitted to furnish provisional 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.

(PRAKASH D. NAIK, J.)