

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

CRIMINAL BAIL APPLICATION NO.731 OF 2020

Sushant Ravi Borde

... Applicant.

Aged 24 years, Occ:Service
r/a Room no.51, B-1,15,
Sangharsh Nagar, Shiv Darshan
Society, Chandivali, Andheri(E)
Mumbai, Maharashtra.
(Currently in Arthur Road Central Jail)

Versus

State of Maharashtra

(at the instance of Sakinaka
police station)

.... Respondent

.....

- Miss Swapna P.Kode, Advocate for the Applicant.
- Mrs.Rutuja Ambekar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 08th JANUARY 2021.**

P.C. :

1. The Applicant is seeking his release on bail, in connection with C.R.No.331 of 2018, dated 25th May 2018 registered with Sakinaka Police Station, under Section 376 of the Indian Penal Code and Section 4 and 8 of the 'Protection of Children from Sexual Offences Act'.

2. The applicant was arrested on 16th November 2019 and since then he is in custody. The investigation is over and the chargesheet is filed.

3. Heard Miss Swapna P. Kode for the Applicant and Mrs. Rutuja Ambekar, learned Additional Public Prosecutor for the State.

4. The prosecution case is that the victim who was 14 years of age at the time of lodging of F.I.R., was residing with her mother and three younger siblings. The FIR is lodged by the victim herself. The victim had lost her father 2 ½ years before the incident. The applicant was residing in the neighborhood. He developed friendly relations with the victim's mother. He started visiting their house. It is alleged in the F.I.R. by the victim that, about 2 months prior to lodging of the FIR, the applicant came to their house at 2.00 a.m. in the night. He asked the victim's mother to get water for him. She went to the kitchen to get water, in the meantime, the applicant removed his clothes, he removed the clothes of the victim and had indecent contact with the victim. The victim's

mother came out of the kitchen, saw this and, shouted at him. The applicant went away thereafter. While going he said that he wanted to marry the victim. After he left, the victim's mother scolded her and told her not to disclose this fact to anybody. After few days, the victim went to reside at her paternal Aunt's house and narrated the incident to her. They contacted child helpline and thereafter, with the help of Social Workers, they approached Sakinaka Police Station to lodge the complaint. FIR was lodged. Investigation was carried out and the applicant was arrested during the course of investigation.

5. The victim was produced before the Metropolitan Magistrate, 7th Court, Dadar, for recording of her statement under Section 164 of the Criminal Procedure Code. In that statement dated 23rd May 2018, same story was narrated as mentioned in the FIR dated 24th May 2018.

6. After conclusion of investigation, Chargesheet was filed. The Chargesheet contains supplementary statement of the victim recorded on 31st October 2018 in which, she has stated that the incident was not true and she had lodged false

FIR because she was feeling insecure due to developing relationship between her mother and the applicant. Similar statements were given by the victim's mother and Aunt.

3. The learned counsel for the applicant submitted that the prosecution case is not true and it is mentioned so by the victim herself in the supplementary statement dated 31 October 2018. Statements of her younger sister and brothers are not recorded. She submitted that the incident could not have occurred as mentioned in the FIR. The applicant is in custody for more than a year and he deserves to be released on bail.

4. The learned APP opposed this application. She submitted that the FIR is supported by the victim's statement recorded under Section 164 of the Criminal Procedure Code. The offence is serious and perhaps because of pressure from her mother, the victim has backtracked on her story.

REASONS:

5. With assistance of both the learned Counsel, I have

perused the chargesheet. The alleged incident had occurred 2 months prior to lodging of the FIR. The FIR itself indicates that the victim's mother was having friendly relation with the applicant, which was not liked by the victim. The victim immediately did not disclose about the incident to anybody and only after telling her paternal Aunt, this FIR was lodged. In May 2018, the victim stuck to her story when her statement was recorded under Section 164 of the Criminal Procedure Code. However, her supplementary statement can not be ignored. In that statement, she has clearly admitted that she was feeling insecure because of the developing relationship between her mother and the applicant. I find force in the submission of learned Counsel for the applicant that the statements of none of her younger brother and sisters were recorded. They could have narrated the incident if it was true. There is absolutely no mention in the chargesheet as to why their statements were not recorded. Admittedly, all of them were residing together.

7 In any case, it was highly improbable that the incident could have occurred in the manner and within a short

time span as narrated in the FIR. In this context, statement of the victim's mother assumes importance. It was recorded on 24.05.2018. This statement was recorded immediately after registration of FIR. At that point, the victim's mother has not supported the case of the victim. She has merely stated that in March 2018 the applicant had come to her house at 2.00 a.m. and he had asked for water. She had given water and at that time, the victim was looking at him. Beyond that, she has not supported the victim's version. Her supplementary statement dated 31st October 2018, supported her own version in her first statement. Thus, victim's own mother has practically destroyed the prosecution case. Therefore, I do not find any justifiable reasons to keep the applicant in custody during the entire period of trial. The applicant deserves to be released on bail. Hence, the order.

ORDER

- (i) In connection with C.R. No.331 of 2018 registered with Sakinaka Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties

in the like amount.

- (ii) Looking at the prevailing circumstances, it may not be possible for the applicant to furnish sureties immediately. Therefore, initially the applicant is permitted to furnish cash bail for the same amount. The applicant will have to furnish the sureties, as directed, within 8 weeks from today.
- (iii) The applicant shall attend the concerned police station once a month for a period of one year from today.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)