

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 20 OF 2021

ROHAN RONALD MENEZES

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

Ms. Tamanna I. Shaikh advocate for the applicant
Smt. Rutuja Ambekar APP for the State
Mr. Karma Vivan for intervenor

CORAM : NITIN W. SAMBRE, J.
DATE: SEPTEMBER 27, 2021.

P.C.:

1] Applicant is seeking bail in C.R. No. 458/2019 registered with M.H.B. Colony Police Station for offence punishable under Sections 376, 354 r/w 34 of the Indian Penal Code and Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to 'POCSO' for the sake of brevity].

2] Allegation against present applicant is, by taking undue advantage of applicant's relation with the victim girl, while victim visited public toilet, applicant administered alcoholic drink and

committed an offence of rape.

3] Investigation in the matter is already completed and charge-sheet is filed.

4] Submissions of the learned counsel for the applicant are, that the investigation nowhere pinpoints direct involvement of the applicant in the crime in question. She would invite attention of this Court to the medical evidence, evidence of independent witnesses and the contradictions as could be noticed from the statement of the various witnesses.

5] Learned APP Ms. Ambekar assisted by Mr. Karma Vivan for the complainant would urge that there is sufficient evidence against the applicant of his prima facie involvement in the crime in question. Apart from presumption under Section 23 of the POCSO Act, learned APP would invite attention of this Court to medical report, statement of victims friend and complainant's statement.

6] I have considered rival submissions.

7] Record depicts that complainant-mother of the victim alleged that incident took place on the intervening night of 15th and 16th December 2019.

8] It appears that, victim alleged that she was administered alcoholic drink and under the influence of the same, victim was subjected to offence in question.

9] If medical report is perused, same does not support case of the prosecution. What has been narrated by the victim and the notes of the doctor are contradictory on the same issue.

10] Victim has stated about manner of sexual assault which does not match with that of narrations made to doctor.

11] Medical report on record does not support case of the prosecution.

12] Apart from above, statement of victim's friend Preeti appears to be in exaggeration to what has been stated by the complainant in complaint.

13] In the aforesaid background, false implication of the applicant cannot be ruled out.

14] Though counsel for the complainant has stated that there are threats issued to the family members of the applicant so as to settle the matter, however, that by itself will not call for rejecting the prayer for bail on the ground that said issue can be properly taken care of.

15] One more aspect which must be taken note of is, instead of investigating the said complaints, since police has issued NC's, complainant has not taken any further steps in the matter.

16] In the aforesaid background, application is allowed on following conditions:

(i) Applicant be released on bail in C.R. No. 458/2019 registered with M.H.B. Colony Police Station for offence punishable under Sections 376, 354 r/w 34 of the Indian Penal Code and Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 upon furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

(ii) Applicant shall not influence the prosecution witnesses in any manner or tamper with the evidence.

(iii) In case applicant fails to appear before the Court below on two consecutive dates for unreasonable cause, Trial Court will be at liberty to initiate suo motu proceedings for cancellation of bail against the applicant.

(iv) Till trial is concluded, applicant shall keep himself outside the jurisdiction of Police Commissioner, Greater Bombay and shall furnish his details viz. contact number, address i.e. place of residence etc. to the Investigating Officer.

17] Application is allowed and disposed of in the above terms.

[NITIN W. SAMBRE, J.]