

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

CRIMINAL BAIL APPLICATION NO.794 OF 2021

Shaikh Mohd. Siraj Mohd. Iqbal .. Applicant

Vs.

The State Of Maharashtra .. Respondent

Mr.Ashvin Thool i/b. Sushant Mahadik, Advocate for
Applicant.

Mr. A.R. Kapadnis, A.P.P. for the State-Respondent.

Mr.Prashant Rawool,Advocate for the Complainant/Intervenor.

Mr. Suresh Pawar, PSI, DCB, CID, Unit II, Chembur, Mumbai
present.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st APRIL 2021

PC.

1. The Applicant has preferred this application for bail in connection with C.R. No.461 of 2019 registered with Shivaji Nagar Police Station for the offences punishable under Sections 376(1) (2) (f) (l) (j) of the Indian Penal Code (for short "IPC") and Section 4, 6, 8, 12 of the Protection of Children from Sexual Offences (for short "POCSO") Act, 2010.

2. The case of the prosecution is that the victim is aged about 14 years. Her father is working with the applicant as peon since last 16 years. The applicant is Ex-corporator. The applicant is the relative of complainant. He is the husband of sister of applicant's mother. He had provided the residential

premises where they were residing. The applicant helps the family of the victim by providing ration and also paying school fees of her brother. The victim used to visit the office of the applicant and conduct the cleaning work on account of the help provided by the applicant. He was respected by the victim's family. On 23.09.2019, the applicant spoke to the victim on the cellphone of her father. He told her that her birthday is approaching and new clothes are to be purchased for her. She was told to come alone at R-City Mall. The applicant also told her that he has handed over money to her father for rickshaw fare. Since the victim had not visited at R-City Mall in the past, instead of visiting alone she took her father alongwith her. She received call from the applicant and he told her that there is traffic at Ghatkopar and she should come to Food Villa Restaurant at Chembur. Victim and her father went to the said place. After having meal, they returned home. On 25.09.2019, the victim again received call from the applicant and she was told that she should visit R-City Mall, Ghatkopar in the evening at about 04.00 pm alone for purchasing clothes. Since she was called alone, the victim had doubt in her mind and hence she took her father with her. They went to R-City Mall. The applicant scolded her for not coming alone. All of them saw movie, they had food and without purchasing clothes the victim and her father returned home. On 27.09.2019 at about 01.00 pm the victim visited applicant's office to help her father. However, her father was

not in the office. The applicant told her that the form is to be filled up for private scholarship which will enable her to go to America. He called her at 08.00 pm at his house and told her that her father would also be there. The applicant visited the house of the applicant at about 08.30 pm at Shivaji Nagar, Mumbai for filling up scholarship form. When she reached there, she did not find her father at the house of the applicant. He called her inside the house. He sat next to her. He told her that his wife does not talk to him properly. He is not treated well by his second wife and therefore, he is disturbed. He likes her. She should develop relationship with him. He intends to marry her. The victim declined the offer of the applicant. Applicant twisted her hand and made her sleep. She tried to shout. He closed her mouth. The applicant removed her clothes and had forceful sexual intercourse with her. The victim managed to leave the place. Her mother was mentally ill. She was in confused state of mind as to whom she should disclose the incident. Her mother's sister Afrojbano Shaikh visited her house and victim told her about the incident. The applicant had helped the family of the victim, he is political leader and there was fear in the mind of the victim and she was in the confused state of mind whether to lodge a complaint or not. She informed the incident to Nusarat Begum Shaikh. She took her to the police station and FIR was registered on 15.10.2019. The applicant was arrested. On completing investigation, charge-sheet is filed.

3. The applicant preferred an application for bail before the Sessions Court. The application was rejected.

4. Learned counsel for the applicant submitted that the applicant has been falsely implicated. He is active social worker. He was elected corporator in the past and on account of political rivalry, the victim has implicated him in the present case. The alleged sexual assault took place on 27.09.2019 between 08.30 pm to 09.30 pm at the house of the applicant. The said allegation is belied by two alibi's which is supported by authentic evidence which shows that the applicant was not present at the spot at the time of the alleged incident. There is evidence procured from CCTV Camera installed at Gita Vidyalaya, a school, which shows that the applicant had entered the compound of the school at 08.33 pm and he interacted with the trustee of the school. The video records applicant leaving the school compound at 08.45 pm. The evidence of CCTV footage is admitted in the charge-sheet. The applicant went to Sadguru Hotel to have dinner with his second wife Ms. Tasneem Shaikh. At that time, his wife had recorded videos and pictures of their outing. The phone through which the pictures and videos were captured has a setting, which records the time and place at which the said images were captured. The electronic document records that the applicant has travelled to Hotel Sadguru at Chembur with his wife and he was at the place till 09.45 pm. The applicant

is innocent and he has been falsely implicated by the victim. The alibi witnesses have supported the applicant through statements, affidavit and electronic documents. The relationship of the applicant with his first wife had soured. The victim is daughter of applicant's sister-in-law from his first marriage. The victim has reported the incident through her aunt i.e. applicant's first wife. The applicant's first wife, mother-in-law and his political rivals have hatched the conspiracy to falsely implicated the applicant. He was to contest the Legislative Assembly elections. The FIR was registered on 05.10.2019 i.e. 8 days after the alleged incident of assault and 2 days after the applicant filing his nomination for the election. It is submitted that the statement of Security Guard of Geeta Vidyalaya mentioned that on 27.09.2019 the applicant visited compound of Geeta Vidyalaya at 08.34 pm and left the said compound at 08.45 pm. He again visited the school compound at 10.00 pm and was around the area till 11.38 pm. which is reflected in CCTV footage which is the admitted document. The affidavit of Ms. Tasneem Shaikh recorded that the applicant was with her during the period from 08.35 pm to 09.45 pm on 27.09.2019. The applicant and Tasneem Shaikh were at Sadguru Hotel till 09.35 pm and thereafter the applicant again visited Geeta Vidyalaya. The father of the victim has stated in his statement dated 08.10.2019 that the applicant had told him to come with her to R-City Mall on 23.09.2019 and 25.09.2019. He stated that

the victim had told him that the applicant had misbehaved with her. He did not refer the alleged rape. The applicant is in custody from 12.12.2019. He is in jail for a period of one and half year. He relied upon the chart of location of the school where he had visited. The medical evidence does not support the case of the prosecution. The applicant may be granted bail.

5. Learned APP submitted that the victim is a minor girl aged about 14 years. The applicant has taken undue advantage of the situation. The victim was subjected to sexual intercourse. Considering the nature of help provided by the applicant to the family of the victim and political clout, the victim was in disturbed state of mind and subsequently developed courage to lodge the complaint. Merely because she took assistance of other major person while lodging complaint, it cannot be inferred that the FIR has been lodged at the instance of others. Statements of witnesses support the prosecution case. There is no reason to disbelieve the version of the victim. Medical evidence supports the prosecution case. The school where the applicant had allegedly visited is situated at a short distance from the house of the applicant. The plea of alibi cannot be accepted. There is no reason to discard the version of the victim.

6. Learned counsel for the intervenor/ victim supported the case of the prosecution. Reply is filed on behalf of the victim. It is contended that the accused was having evil eye on the victim since long. She was called under the pretext of filling scholarship form. She was informed that her father would be in the house. The accused committed penetrative sexual assault on the victim for a period of 8 to 10 minutes. The applicant had preferred an application for anticipatory bail before the Sessions Court. Interim protection was granted to him. During the pendency of the said application, the applicant and his supporters had celebrated the grant of interim protection. Threats were issued to the family members of the victim. The father of the victim had filed NC report about threats with the Police. The copy of NC complaints are annexed to the reply. The medical report mention that there was a penetrative sexual assault on the victim, a minor girl. The plea of alibi cannot be considered at this stage. The applicant is politically connected and in the event of grant of bail, he would threaten the family of the complainant/victim. There are criminal antecedents against the applicant vide C.R. No.1015 of 2004 under Section 37 (A) (1) read with Section 135 of Bombay Police Act, C.R. No. 208 of 2013 was registered for the offence under Section 385 read with 34 of IPC and C.R. No. 67 of 2017 registered for the offence under Sections 143, 144, 145, 146, 147, 148, 149, 452, 427, 504, 506, 323 read with 34 of IPC. The NC complaints were filed by father of the

victim on 10.10.2019 and 25.06.2020. Complaint was forwarded to the Commissioner of Police and Senior Inspector of Police on 09.12.2019 against the applicant for threatening to implicate the victim's father and family members in false case. The complaint was also forwarded to the Deputy Commissioner of Police on 17.10.2019 making grievance for not initiating arrest of the accused under the provisions of POCSO Act. Complaint was also forwarded to Shivaji Nagar Police Station on 26.10.2019.

7. The learned counsel for the applicant relied upon the decision of the Apex Court in the case of Arnab Manoranjan Goswami Vs. The State of Maharashtra & Ors. delivered in criminal Appeal No. 742 of 2020 and order dated 05.10.2020 passed by this Court granting bail in Criminal Bail Application No.3410 of 2019.

8. The FIR was lodged on 05.10.2019. The alleged incident had occurred on 27.09.2019. The delay is not fatal in the facts of this case. There is explanation for delay. The victim has fairly disclosed in her statement that the accused was helping her family. The father of the victim was working with him since last several years. The applicant has provided financial help to her family. The victim then stated that the applicant had initially called her at Mall. She was called alone however, she visited with her father. She was scolded for not coming

alone. Victim was called at the residence of applicant on 27.09.2019. The incident had occurred on the same day. The victim had disclosed that she was subjected to sexual assault at about 08.30 pm. The victim is a minor girl aged about 14 years. The plea of alibi of the applicant cannot be accepted. The case of the prosecution is that the school where the applicant had allegedly visited is situated near his residence. The CCTV footage about the presence of the applicant in the school premises and the affidavit of the applicant's wife about their visit to Sadguru Hotel fortified by the video recording is not sufficient to disbelieve the version of the victim. The CCTV footage collected from the Mall vide panchnama dated 14.01.2020 also refers to the facts that on 24.09.2019 at about 07.06 pm., the accused, the victim and the father were seen entering the Mall. During the course of investigation, the statement of first wife of the applicant was recorded. The statement of Bhagvan Kasbe was recorded. According to the victim, applicant is not having cordial relationship with his first wife who is sister of victim's mother and that the other witness is politician. There is no reason to discard the version of the victim on account of submissions advance by the learned counsel for the applicant. The supplementary statement of the father of the victim was recorded in which he has stated that the victim had informed him that she was sexually assaulted by the applicant. Statement of other witnesses were recorded which support the prosecution case. I

also perused the medical evidence which shows “Hymenal tear present at 7 ‘o’ clock position with perihymenal redness, redness of hymenal edges and periurethral redness. The opinion of the Medical Officer forwarded to the Police mentioned that the hymenal tears as mentioned in the medical examination reports are 5 to 7 days old. Possibility of victim being first time sexually assaulted cannot be ruled out. The father of the victim has filed NC complaint about the threats. No case for grant of bail is made out. Hence, the following order:-

ORDER

Criminal Bail Application No.794 of 2021 is rejected.

(PRAKASH D. NAIK, J.)