

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

CRIMINAL BAIL APPLICATION NO. 1318 OF 2019

Sachin Apparao Kamble

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Aniket Nikam i/b Mr. Vivek Nandkishor Arote for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent No.1–State

None for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.

MONDAY, 8th MARCH 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail
in connection with C.R. No. 134 of 2018 registered with the Yerwada
Police Station, Pune, for the alleged offences punishable under Sections
376, 354, 354(A), 506 of the Indian Penal Code and under Sections 3(b), 4,
7, 8, 16 and 17 of the Protection of Children from Sexual Offences Act.

3 Learned counsel for the applicant submits that the applicant has been falsely implicated in the said case. He submits that although the alleged incident of sexual assault is alleged to have taken place in May 2017, only in February 2018, a complaint/FIR was lodged by the father of the prosecutrix as against the applicant.

4 Learned A.P.P opposes the application. He submits that the prosecutrix was a minor girl aged 12 years at the relevant time. He submits that the statement of the complainant (father of the prosecutrix) is consistent with what was disclosed by the prosecutrix aged 12 years to her father as well as history given to the doctor.

5 Learned counsel for the complainant adopts the submissions advanced by the learned A.P.P and opposes the bail application.

6 Perused the papers, in particular, the statement of the prosecutrix, who at the relevant time was aged 12 years. According to the prosecutrix, some time in March 2017, when she returned home, she saw the applicant leaving her house and her mother in a nude condition. She has stated that when she told her mother that she would inform the incident to her father (complainant), her mother asked her not to disclose the same,

as the applicant was her friend. The prosecutrix has further alleged that in May 2017, when she was watching television at her residence, the applicant came home and asked about her mother, to which, she replied that her mother was in the wash room. She has alleged that the applicant sat next to her on the Sofa, touched her inappropriately and inserted his finger in her private part, as a result of which, she had pain and started crying. The applicant is alleged to have told the prosecutrix that he wanted to do acts which he had done with her mother and that if she refused, he would circulate nude photographs of her mother to all her friends and would defame her mother and her. The statement recorded under Section 161 of the prosecutrix is consistent with her statement recorded under Section 164. It appears that when the prosecutrix met her father in January 2018, she disclosed the aforesaid incident to her father, pursuant to which, he lodged a complaint with the Yerwada Police Station, Pune, as against the applicant. The complainant has set out the reasons for the delay caused in filing the aforesaid complaint/FIR. The statement of the victim girl/prosecutrix is corroborated by the medical evidence on record. The history given by the prosecutrix to the doctor is consistent with what she has stated in her 161 and 164 statement. Although the prosecutrix aged 12 years was examined after 8 months of the incident, clause (VI) with respect to local examination, shows that injury was present to the hymen and that there was

an old healed tear present at position of 2'O clock. The doctor has opined that from examination, there is evidence of vaginal penetration, which is consistent with the history.

7 Considering the material on record and the nature of allegations that the applicant sexually assaulted a 12 year old girl, this is not a fit case to enlarge the applicant on bail. The application is accordingly rejected.

8 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.