

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

CRIMINAL BAIL APPLICATION NO.1277 OF 2020

Karim Jafar Nagothkar

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Nitin Sejpai, Advocate for Applicant.
- Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd FEBRUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.18/2020 registered with Roha Police Station, Raigad, under sections 376-AB (l)(j), 354, 354-A (1)(2), 354-B of the Indian Penal Code and under sections 5, 8, 9 and 10 of The Protection of Children From Sexual Offences Act (POCSO), 2012.
2. The Applicant was arrested on 07/03/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. Heard Mr.Nitin Sejpal, learned counsel for the Applicant and Mr.S.H. Yadav, learned APP for the State.
4. The FIR is lodged by mother of the victim. The victim was 10 years of age on the date of incident. The victim was mentally challenged since birth. On 28/02/2020 she had gone to school with her younger sister who was 7 years of age. However, the younger sister returned home, but the victim had not returned. The first informant tried to search for her. When she went near the school, she saw that the victim and one unknown person were climbing down the steps. The informant questioned the unknown person as to why he had taken the victim with him. He did not give any answer. He tried to go away from the spot. The informant slapped him. Thereafter she took the victim with her and came home. She told this incident to her husband. She did not find any injuries on the person of the victim and therefore she did not tell this incident to anybody else. On 29/02/2020 the victim complained that she was having pain in her stomach. On the next day, the informant came to

know a number of helpline. She made a phone call to that number. She was contacted by the office bearers of children protection group. They took the informant to police station for lodging their complaint. The police officers then searched for that person. At that time they did not find him. The victim was crying and did not give any further information. She was taken for medical examination. The informant was told that the victim's hymen was ruptured. Thereafter this FIR was lodged.

5. Mr.Sejpal submitted that the Applicant has obtained statements of the parents of the victim recorded on 02/03/2020 through the Right to Information Act. He relied on those statements. Since he had produced these statements. I am taking them on record. They are marked 'X Collectively' for identification. He submitted that those statements show that they had no grievance against anybody and they had denied occurrence of such incident. He therefore submitted that the Applicant is falsely implicated and he deserves to be released on bail. He further invited my attention to the statement of the

medical officer Dr. Ankita Khairkar. He submitted that this statement shows that on 06/03/2020 at least 15-20 persons had approached her and therefore she was under some pressure. She has explained that on the OPD papers she had wrongly mentioned the date as 02/03/2020 though correct date was 06/03/2020.

6. Mr. Sejpal submitted that there were no injuries on the person of the victim. The Applicant is falsely implicated. He also relied on statements of Amol Arun Jadhav and Akesh Ramesh Birje. They have stated that on 28/02/2020 the first informant was satisfied that no offence was committed and she did not lodge FIR. He therefore submitted that the Applicant is falsely implicated. Therefore he deserves to be released on bail.

7. Learned APP relied on the investigation papers and in particular the statement given by the victim herself to oppose this application.

8. I have considered these submissions and with the assistance of the learned counsel I have perused the entire charge-sheet. Most significant statement in this case is that of the victim herself. Her statement was recorded in front of the Child Protection Committee and it was interpreted by one Rajani Chavan. Rajani has stated that the victim's statement was recorded as per the information given by the victim. This witness has interpreted the statement given by the victim. In that statement she has narrated that the offender had taken the victim to a room and had touched her private parts. Victim was mentally challenged and was 10 years of age. Therefore offence u/s 9 (k) of POCSO is clearly made out from that statement. It is an aggravated sexual assault which is punishable with sentence of not less than 5 years and which could extend to 7 years. This statement has to be read in the background of statement of one Ismail Mubarak Ali Shaikh and Nabi Mubarak Ali Shaikh. Both of them have stated that the Applicant had taken the victim inside a godown and after some time when both of them came out, they were accosted by the informant and they had also seen

the later part of the incident when the informant had abused and quarreled with him. Thus, at this stage, there is sufficient corroboration to the victim's version in the form of these two witnesses. Therefore there is not much force in the submissions made by Mr.Sejpal that the medical evidence does not show any injuries. The narration given by the victim does not make any such averments. Therefore this submission is irrelevant. So far as Doctor's statement is concerned, the change in date on O.P.D. papers is also not material in this case. The statements of the parents of the victim obtained by the Applicant through Right to Information Act, do not help the Applicant's case. Offence is serious. There is sufficient material against the Applicant. Therefore bail cannot be granted to him. The application is rejected.

(SARANG V. KOTWAL, J.)