

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

BAIL APPLICATION NO. 2891 OF 2019

Geethkumar Somnathan Pillai ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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Mr. Amit Singh i/b. Mr. Charan Penthaliya, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Ms. Tejaswi Rane, Advocate for complainant/Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th JULY, 2021

PER COURT:

1. The applicant was arrested on 13th November, 2017, in connection with C.R. No. 361 of 2017 registered with Vitthalwadi Police Station, Ulhas Nagar, Dist. Thane for offences under Sections 376, 377, 323, 506 r/w Section 34 of Indian Penal Code (for short “IPC”) and Sections 4, 6, 8 & 17 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’).

2. The case of the prosecution is that the complaint was lodged by the mother of victim on 13th November, 2017. According to complainant, the complainant and her family used to visit

Sharon Fellowship Church for prayers. The Priest in the said church had gone to America in the year 2013 and hence the church was closed. Thereafter, the complainant got acquainted with the applicant, who was Priest (Pastor). Both the families became close to each other and they were on visiting terms. The applicant then persuaded the complainant to appoint him as Priest in Sharon Fellowship Church and on her recommendation, the applicant was appointed as Priest (Pastor) in the said church. In September, 2017, the complainant received a call from Smt. Varsha Nevgi, who was also visiting the Sharon Fellowship Church for offering prayers and she told the complainant that the applicant had outraged her modesty and she should verify whether her daughter is subjected to such treatment. Pursuant to that the complainant took the victim in confidence and at that time the daughter disclosed her that since 2015, the applicant used to drop her in school and accompany her while returning home after school time is over. She further stated that the applicant had conversation with her about physical relationship and tried to come close to her. In February – 2015 she was subjected to sexual assault. She threatened not to disclose the incident to any person. Thereafter, in July-2016, the victim got acquainted with another lady namely Khushbu Raja. She was visiting the church for offering prayer. She was also acquainted

with the applicant. In – 2017, mother of victim was called by Khushbu and told her that her uncle had met with an accident. Request was made to send the victim to accompany her. The victim thereafter, joined them and visited the house of Khushbu. She was again sexually assaulted. There was physical relationship between them on several occasions. To avoid pregnancy, the co-accused had given her contraceptive. On 24th April, 2017, the victim, applicant and co-accused Khushbu had planned to go for movie. Instead of that, victim was taken to the house of the applicant and both had subjected her to sexual assault. She was also subjected to unnatural sex. She was threatened not to disclose the incident to any person. Somewhere in August – 2017, the wife of the applicant saw the messages forwarded by applicant to the victim and she picked up quarrel with the victim. On the basis of said information, the complainant lodged First Information Report (for short 'FIR'). In pursuant to that the statement of victim girl was recorded on 14th November, 2017. Statement of Smt. Nevgi were recorded. The mother of victim was recorded on 14th November, 2017. Statements of other witnesses were recorded. Statement of victim was recorded under Section 164 of Cr.P.C. and similarly the complainant's statement is also recorded under Section 164 of Cr.P.C.

3. The applicant had preferred an application for bail before the Sessions Court. The said application was rejected vide order dated 23rd May, 2019.

4. Learned Advocate for the applicant submitted that the applicant is in custody from 30th November, 2017. For a period of about three and half years he is in jail. There is no progress in trial. The applicant has been falsely implicated in this case. There is delay in lodging FIR. The statements of the complainant, victim recorded under Sections 161 & 164 of Cr.P.C. are contradictory. There is no reason for not lodging the complaint or intimating the incidents to the mother by the victim. It is further submitted that the allegations in the FIR are concocted. The applicant is a Priest. He used to offer prayers for everyone. The applicant has given loan to complainant which was not returned. The applicant has relied upon the photographs which shows that the relationship between the victim and applicant were cordial and nothing is visible which shows that the victim had any grievance against the applicant. The applicant has also relied upon other photographs shows that the victim was acquainted with some other person. It is submitted that the victim had travelled along with applicant by Aeroplane during the period when she has alleged that she was being sexually

assaulted. Copies of the air tickets are annexed to this application. The applicant cannot be detained in custody for indefinite period. It is not clear as to when the trial would commence and come to an end. The co-accused Khushbu Raja has been granted bail.

5. Learned APP submitted that there is no reason for the victim and her mother to file complaint against the applicant. The FIR and the statement of the victim recorded under Section 164 of Cr.P.C. attributes specific overt act of sexual assault to the applicant. The medical evidence supports the case of the prosecution. The victim was minor. The provisions of POCSO Act are invoked in this case. The statement of Smt. Nevgi also implicates the applicant alleging that the applicant had outraged her modesty. The applicant be directed to delete the photographs annexed to this application.

6. Learned counsel for the complainant submitted that the offence is of serious nature. The victim was minor. There are several incidents of sexual assault which are reflected in the statement of the victim. The victim has alleged that the accused had threatened that he had video clips. The applicant is not permanent resident. The version of the victim cannot be discarded at this stage.

7. The FIR was lodged by the mother of victim. From the

tenor of the FIR it is apparent that the victim had not disclosed the incidents of sexual assault to the complainant and it is only after she was informed by another lady Smt. Varsha Nevgi alleging that she was subjected to outraging modesty and she should find out whether her daughter was also subjected to such treatment, the complainant allegedly took her daughter in confidence and the incidents were disclosed to her. The case of the complainant that accused and the family of complainant were acquainted with each other since 2014. The applicant was allegedly dropping the victim to school and used to accompany her while returning home. Surprisingly, the complainant had not noticed the objectionable behaviour of the applicant. The victim have not specified the dates of the incidents. The first incident had occurred somewhere in – 2015 and subsequent incidents continued thereafter, in – 2016 and in April – 2017. The victim had never disclosed those incidents to her mother or to any other person earlier. It is also alleged that the victim was subjected to sexual assault in April – 2017 by the applicant and the co-accused Khushbu Raja. No complaint was lodged either against the applicant or Khushbu Raja. Smt. Nevgi had alleged in her statement that in September – 2017 she was subjected to act of outraging modesty. Even she did not lodge any complaint in respect to the said incident. The statement of victim

was recorded on 22nd November, 2017 under Section 164 of Cr.P.C. On perusal of the said statement it can be seen that there is improvisation in the said statement. The statement reflects details which were not found in her statement recorded under Section 161 of Cr.P.C. The applicant has relied upon certain photographs indicate that the said photographs were clicked during the period when alleged incident had occurred and the photographs shows that the relationship was apparently cordial between the applicant and victim. Applicant is directed to delete/remove the photographs from paper book/application. The co-accused Khushbu Raja who had allegedly subjected the victim to sexual assault along with applicant on 24th April, 2017 has been granted bail. The applicant has also relied upon the air tickets which indicate that the victim had travelled with the applicant along with her mother on 17th February, 2016. This is not the stage to give any finding with regards to the genuineness of the FIR and other statements. Having considered the averments in the statements and the observations as stated above, and considering the fact that the applicant is in custody since last three and half years, further detention of the applicant is not necessary.

8. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No. 2891 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 361 of 2017 registered with Vitthalwadi Police Station, Ulhas Nagar, Dist. Thane on executing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)