

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

BAIL APPLICATION NO. 3000 OF 2019

Mohammed Nasim Samim Hasami ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Mahesh Tiwari, Advocate for the Applicant.

Mr. Rajendra Mishra, Advocate for Complainant.

Ms. Muskan Ansari, Victim, Present through V.C.

Ms. Nargis Mohd. Vakil Ansari, Complainant, Present through V.C.

Ms. Veera Shinde, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th JULY, 2021

PER COURT:

1. The complainant and the victim are present before the Court through V.C. They are represented by the Advocate.

2. Leave to amend. Amendment may be carried out immediately. The complainant may be added as respondent No.2 in this application.

3. The applicant is arrested on 21st January, 2019, in connection with C.R. No. 78 of 2019 registered with Malwani Police Station, Mumbai for offence under Section 363 of Indian Penal Code (for short “IPC”). Subsequently, Sections 376(2)(i)(f)

(n) of IPC and Sections 4, 5 (j)(l)(n) & 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') were invoked.

4. The complainant is the mother of victim. The victim is aged around 16 years. She has alleged that on 11th January, 2019, the victim was found missing from the house. Inquiry was made and they tried to search the victim. They suspected that somebody must have enticed and kidnapped her. Hence, First Information Report (for short 'FIR') was lodged against unknown person on 18th January, 2019.

5. The victim was traced. The statement of the victim was recorded on 21st January, 2019. She stated that the applicant is her maternal uncle. He is residing with them. On 9th January, 2019 the applicant sexually assaulted her. She did not disclose the incident to any one. Since last four years the applicant is sexually assaulting her. She tried to disclose the incident to her mother, but she had ignored it. On 10th January, 2019 she left the house without informing anyone. She met Yasin, boy aged around 19 years. She went to Grant Road along with him. On 11th January, 2019, She returned to Malwani area. They were noticed by the family members of Yasin and they were taken home. Her uncle had visited

her house. Victim's mother was planning to send victim to Chandigadh with her uncle. She was not inclined to go. Hence, again without informing anyone she left the house. Whole night she roamed around. On the next day, she went to house of her friend Farzana. The family members of Yasin again noticed her and she was handed over to her family.

6. The applicant had preferred an application for bail before the Special Court under the POCSO Act. The said application was rejected vide order dated 30th July, 2019.

7. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. The statement of the victim recorded under Section 164 of Cr.P.C. completely exonerates the applicant. No overt act of sexual assault has been attributed to the applicant. Both the statements of victim are contradictory. The applicant is in custody for more than two years. The applicant do not have any criminal antecedents.

8. Learned APP submitted that the statement of the victim recorded under Section 161 of Cr.P.C. specifically attributes role to the applicant. Subsequently, she has changed her version in the statement under Section 164 of Cr.P.C. The medical evidence supports the prosecution case.

9. Learned counsel for the complainant submitted on instruction from the complainant that the complaint has been wrongly recorded. The complainant is illiterate lady.

10. The applicant is the maternal uncle of the victim. The victim has left the house on 11th January, 2019. Complaint was lodged on 18th January, 2019. The complainant had never noticed objectionable behaviour of applicant. All of them were residing together. There were no complaints against the applicant in the past. The victim had never disclosed about such incident to her mother in the past. The incidents had occurred since last four years. Although the victim has attributed the alleged act of sexual assault to the applicant, in statement under Section 161 of Cr.P.C.; her statement recorded before learned Magistrate under Section 164 of Cr.P.C. completely exonerates the applicant. There is no iota of any allegation against the applicant. On the contrary the victim has stated that the relationship between her mother and father were not cordial and her mother had divorced her father. On 10th January, 2019, her mother shouted at her. Her uncle also scolded her. At about 7.00 p.m. she left the house on her own and went to the house of Yasin. They were accompanied by other persons. On that day she went out along with Yasin and returned on the next

day. Statement of Rijzawana Khan and Yasin were recorded. They have stated that the victim had visited their house. The medical examination report of victim mentions that there were no any external injuries. It also refers to old healed hyemnal tear. Considering victim's version under Section 164 of Cr.P.C. and other circumstances, applicant need not be detained further in custody. He is in jail for two and half years.

11. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No.3000 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 78 of 2019 registered with Malwani Police Station, Mumbai on executing PR. Bond in the sum of Rs.25,000/- with one or more 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) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (v) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)