

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3222 OF 2019

Ritik Ramkawar Sirswal

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Mahesh Rajpopat i/by Mr.Ramesh Mishra for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th August 2021

PC :

1. The applicant has preferred this application under Section 439 of Code of Criminal Procedure for bail in CR No.604 of 2018 registered with Powai Police Station for offences under Sections 377, 506 of Indian Penal Code and under Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012. The FIR was lodged on 25th November 2018. The applicant was arrested on the same day. The FIR was lodged by mother of the victim.

2. The prosecution case in short is that the son of the complainant was subjected to unnatural sex by the accused. On 24th November 2018, the complainant was informed by her son that the victim boy was sexually assaulted by the accused. The complainant then spoke to the victim boy, who informed her that the accused has subjected him to unnatural sexual assault. He was threatened. The complainant then tried to approach the accused who was not found in the house. At the same time another victim boy informed the complainant that he was subjected to similar act. He also informed

that another victim boy was also subjected to unnatural sexual assault. The statements of victims were recorded. On completing investigation charge sheet was filed.

3. The complainant was added as respondent. Notice was issued to added respondent. The Investigating Officer of concerned Police Station was also instructed to intimate complainant about she being impleaded as the respondent and if she desire to represent through the counsel, she is at liberty to do so or seek legal assistance through legal aid. Notice was issued to the complainant. Learned advocate for applicant was permitted to serve respondent no.2 by way of private notice. Vide order dated 19th July 2021 it was recorded that notice issued to respondent no.2 has been served. Learned APP, on instructions, submitted that intimation about hearing of this application has been given to the complainant. Learned advocate for applicant submitted that private notice is also given to respondent no.2/complainant. Since the complainant was absent, to enable her to appear in the matter, the application was adjourned to 26th July 2021. Once again the application was adjourned to 30th July 2021. Subsequently the application was heard on 30th July 2021 and adjourned to 6th August 2021 and 10th August 2021 for passing order.

4. The applicant had preferred application for bail before Special Judge under POCSO Act which has been rejected by order dated 9th October 2019.

5. Learned advocate for applicant submitted that the applicant has been falsely implicated in this case. The applicant is in custody since last 32 months. There is no progress in trial. The medical evidence does not support the version of victims. The applicant is

not having any criminal antecedents. He is aged about 18 years as per prosecution case. The radiological test, however, indicate that he may be less than 18 years of age.

6. Learned APP submitted that there are three victims in this case. There is no reason to discard their statement. Two victims were examined after lapse of time from the date of incident and hence there is no medical evidence. The applicant is aged about 18 years. Hence, the application for bail may be rejected.

7. The applicant is in custody from 25th November 2018. Investigation is completed and charge sheet is filed. According to the prosecution, certificate dated 29th November 2018 was issued by Manav Vikas Vidyalaya which mentions that applicant was a student of said school and as per general register his date of birth is 17th July 2000. Thus, the age of applicant is about 18 years. The report submitted by Department of Forensic Medicine mentions that the age of applicant is around 17 years ($\pm$ six months). The statement of son of the complainant (victim) was recorded on 29th November 2018. He stated that he was subjected to sexual assault for the first time about two to three months ago in the house of accused and for the second time on 24th November 2018. He has stated that accused was attempting to insert his private part into anus of the victim. The medical examination report of the first victim mentions that fissure was seen at 12-0 clock position. No active bleeding. Erythema present around fissure. Statement of second victim was recorded on 17th November 2018. He has stated that the incident had occurred about four months ago. He has stated that he was subjected to sexual assault on two occasions. The first incident had occurred about four months ago and the second incident had

occurred about one month prior to the date of recording his statement. He stated that the accused was attempting to commit alleged act by inserting his private part into the rear portion of his body. The medical examination report of the said victim mentions that there is no evidence of injuries. Anal region is normal. No evidence of injuries. Lateral buttock traction test negative and anal tone is normal. There is no evidence of injuries. The statement of third victim was recorded on 29th November 2018. He has stated that he was subjected to sexual assault once, which had occurred at about three to four months ago. He was medically examined. The report mentions that there is no evidence of injuries. No evidence of recent injuries, annul region normal, lateral buttock traction test negative and anal tone normal.

8. Thus, the medical evidence in respect to the first victim refers to the injury in the nature of fissure and the medical evidence qua victim nos.2 and 3 does not support the prosecution. The victims have stated that the accused had attempted to commit alleged act as stated by them. The applicant is aged about 18 years. He is in custody since last about 32 months. There are no criminal antecedents against him. Hence, on certain conditions, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.604 of 2018 registered with Powai 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 stay out of jurisdiction of Powai Police

Station till conclusion of trial;

(iv) The applicant shall furnish details of his mobile number and residence to the Investigation Officer where he proposes to reside after release on bail;

(v) The applicant shall attend Trial Court proceedings on every date of hearing unless exempted by the Trial Court;

(vi) The applicant is permitted to provide provisional cash bail in the sum of Rs.25,000/- for eight weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)

MST