

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

**BAIL APPLICATION NO. 3352 OF 2019
WITH
INTERIM APPLICATION NO.17 OF 2020**

Sujit Rajesh Chandeliya ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Prajakta Shinde i/by Mr. Sunny Waskar, Advocate for the Applicant in B.A.

None for the Applicant in I.A.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th JULY, 2021

PER COURT:

1. This is an application for bail. The applicant is arrested on 3rd May, 2018 in connection with C.R. No. 223 of 2018 registered with Borivali Police Station, Mumbai for offences under Sections 376, 376(D), 323, 504 & 506 of Indian Penal Code (for short “IPC”) and Sections 4, 8 & 12 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’).

2. The case of the prosecution is that the victim is aged about 15 years. Somewhere in second week of March – 2018 at about 4.00 p.m. the victim was alone at home. The applicant is her

neighbour. He told her to keep watch at his house as he is going out. The victim went near the room of the applicant/accused. At that time the other accused Aman came there. He called him inside the house of the applicant. She went inside his house. He had forceful forcefully sexual intercourse with her. She shouted for help. He increased the volume of T.V. thereby nobody could hear her shouts. After sometime applicant returned to house and the co-accused went to the bathroom. The applicant then subjected her to sexual assault. The victim managed to go home. Thereafter, both the accused were demanding sexual favours. 4 to 5 days prior to the lodging complaint she was assaulted by the co-accused Aman and she sustained minor injury to her hand which was noticed by her grandmother. She disclosed the incident to her. Complaint was lodged on 3rd May, 2018 alleging that both the accused had acted in connivance with each other and subjected the victim to sexual assault.

3. Learned Advocate for the applicant submitted that the First Information Report (for short 'FIR') is false. The applicant has been falsely implicated in this case. Both the incident had occurred in March, 2018. The FIR was lodged on 3rd May, 2018. The applicant is in custody since last 3 years. There is no progress in

trial. He has been implicated on account of enmity. The statement of the victim recorded under Section 164 of Cr.PC. is contrary to the statement under Section 161 of Cr.PC.

4. Learned APP submitted that the specific role has been attributed to the applicant. The victim was minor. Medical evidence supports the prosecution case. There is no reason to disbelieve the version of the complainant. Statements of the witnesses corroborate the prosecution case.

5. The FIR was lodged by the victim herself on 3rd May, 2018. The alleged incident had occurred somewhere in March, 2018. Thus, there is delay in reporting incident. According to complainant she was asked to keep watch at his house by the applicant/accused. She went in front of applicant's house and at that time the co-accused came there and sexually assaulted her. The FIR alleges that both the accused were acting in connivance with each other. The applicant thereafter came to house and sexually assaulted her in the house. No complaint was lodged immediately. On perusal of the statements under Section 164 of Cr.PC. it would indicate that the co-accused Aman had appeared at the premises independently when the applicant returned home. The co-accused tried to hide himself in bathroom. This shows that both the accused

were not acting in connivance with each other. The version of victim appears to be doubtful. The applicant is in custody for a period of about 3 years. There is no progress in the trial. Hence, case for grant of bail is made out.

6. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No. 3352 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 223 of 2018 registered with Borivali Police Station, Mumbai on executing P.R. 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 shall not approach the victim or any other witnesses and shall not tamper with the evidence.
- (v) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of twelve weeks in lieu of surety.
- (vi) Bail Application No.3352 of 2019 and Interim Application No.17 of 2020 stand disposed of accordingly.

(PRAKASH D. NAIK, J.)