

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

BAIL APPLICATION NO. 3353 OF 2019

Mohammed Gulzar Mohammed Ismail Khan ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

.....

Mr. Amresh Sharma, Advocate for the Applicant.

Mr. R. M. Pethe, APP for the Respondent No.1 – State.

Mr. Kunal Jha, Advocate for the Complainant/Respondent No.2.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 25th AUGUST, 2021.

PER COURT:

1. This is an application for bail in C.R. No. I-128 of 2018 registered with APMC Police Station, Navi Mumbai for offence under Section 376 of Indian Penal Code (for short “IPC”) and Sections 4, 6, 8 & 10 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’).

2. The First Information Report (for short ‘FIR’) was lodged by the mother of victim girl. It is alleged that the daughter of the complainant, who is aged about 3 years was sexually assaulted by the accused by inserting finger in her private part.

SAJAKALI
LIYAKAT
JAMADAR
Digitally signed
by SAJAKALI
LIYAKAT
JAMADAR
Date:
2021.08.26
10:54:38
+0530

Pursuant to statement of the complainant, the statements of the victim/child was recorded on 20th May, 2018 as well as on 22nd May, 2018. On completing investigation, charge-sheet was filed.

3. Learned Advocate for the applicant submitted that the applicant is in custody for a period of more than three years. The applicant has been falsely implicated in this case. Medical evidence does not support the case of the prosecution. The applicant cannot be kept in custody for indefinite period.

4. Learned APP submitted that the statements of the complainant and the victim child cannot be disbelieved at this stage. The victim has attributed specific overt act of sexual assault to the applicant. The discrepancies about the medical evidence can be considered at the stage of trial.

5. Learned Advocate for respondent No.2 has tendered affidavit executed by respondent No.2/complainant. In the affidavit it is stated that the Police Station had cooked up the story and under the threat of police she had signed the complaint. She was not explained the contents of the complaint. The accused is innocent. The allegations against him are baseless. The accused is her brother. She has no complaint against accused, who is innocent. The affidavit in hindi version executed by respondent No.2 is also

tendered. In the said affidavit also the respondent No.2 has averred that accused is innocent and bail be granted to him.

6. The FIR was lodged by respondent No.2. The statement was recorded on 20th May, 2018. In the said statement it is alleged that the victim had visited the house of the accused on third floor. In the evening she complained of pain while passing urine. She noticed redness on the private part of the victim. The victim then disclosed her that accused had inserted finger in her private part and also kissed her. The FIR was lodged. It is difficult to accept at this stage that her statement is false. The victim was aged about 3 years. Her statement also implicates the applicant. There is no reason for the victim child to give false statement against applicant. In both the statements the victim has attributed specific overt act to the applicant having sexually assaulted her. The statements are very clear. The affidavit filed by the complainant cannot be considered at this stage. She has never complained to the Police that her statement is not correct. The question of filing false complaint by police does not arise. It is obvious that complainant is trying to support applicant. The submissions of learned counsel for the applicant cannot be accepted at this stage. However, considering the fact that the applicant is in custody for more than

three years, trial can be expedited.

ORDER

- i) Bail Application No. 3353 of 2019 is rejected and disposed of accordingly;
- ii) Trial is expedited.

(PRAKASH D. NAIK, J.)