

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3572 OF 2019**

Raj Kumar Kanchhedichal Raikwar .. Applicant

Vs.

The State of Maharashtra & Anr. .. Respondents

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Mr.T.N. Upadhyay for the Applicant.

Ms.Brenda D'Souza for Respondent No.2

Mrs.S.S.Kaushik, A.P.P. for the State.

PSI Abhijit Jadhav attached to Sahar Police Station present.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 31ST MARCH, 2021.

P.C:-

1. This is yet another case where the young girl, aged 9, was subjected to a sexual assault. A complaint came to be lodged by the complainant alleging that the applicant, who was working as a driver with Cinegraphic and who was residing in the same chawl where the complainant was residing, on 26th August, 2018 subjected her little girl aged 9 years to sexual harassment. On a complaint being lodged by the mother, the offence came to be registered under Section 376(2)(i)(j) of the

Indian Penal Code (“**the IPC**”) and Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (“**the POCSO Act**”). The victim girl reported to her mother about the incident when the applicant is alleged to have molested her by removing her underclothes and the act, which the victim complained of, would squarely fall within the purview of Section 375 (b) and (c) of the IPC and of course, since the said act is committed against her will, without her consent and she being minor, the provisions of Sections 4, 6 and 9 of the POCSO Act have also been invoked.

2. The statement of the victim came to be recorded on 1st July, 2018 and her statement under Section 164 of the Cr.P.C. is also recorded, according to the learned APP. The version of the complainant and the statement of the victim girl are in sync and clearly implicate the present applicant. The victim girl was referred for medical examination on the next day. The medical report, however, specify that the act is not suggestive of sexual assault and the opinion given is, “there are no signs of sexual assault”. On completion of the investigation, charge-sheet has been filed in the competent court.

3. The submission of the learned counsel for the applicant is, in-spite of his arrest since 26th August, 2018, no charge has been framed till date. Pertinent to note that the enactment of POCSO Act is to *inter alia* protect the children from sexual harassment and provide for establishment of Special Courts for trial of such offences. The Act contemplate that the trial should be expeditiously concluded. However, in the present

case, till date, even the charge is not framed. There is no dispute about the fact that the offence is serious one and though the objective enshrined in the Act is to protect the children from being subjected to sexual offences and punish the perpetrator of the crime, awaiting a trial, a person cannot be indefinitely incarcerated as the criminal jurisprudence prevalent in this country, presupposes an accused to be innocent till he is proven guilty. He will undergo the requisite penalty once proved guilty.

4. In peculiar facts of the case, on account of extreme delay in proceeding with the trial and taking into account the gravity and seriousness of the offence, I am of the opinion that the applicant deserve his liberty and is entitled to be released on bail subject to the stringent conditions being imposed upon him that in no way, he would tamper with the victim girl or the prosecution evidence. Further, it is also noted that the applicant is the resident of Madhya Pradesh and, therefore, it is also necessary to ensure his presence in the State for being tried and the following order would ensure the same.

: ORDER :

(a) Application is allowed.

(b) Applicant – Raj Kumar Kanchhedichal Raikwar shall be released on bail in C.R.No.204 of 2018 registered with Sahar Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or more sureties from the State of Maharashtra of the like amount.

- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer
- (d) The applicant shall not tamper with the prosecution evidence.
- (e) The applicant shall not enter the chawl located in Andheri (East), Mumbai where the victim girl and her family is residing and keep himself away from the said area.
- (f) The Applicant shall mark his attendance in Sahar Police Station on every Monday and Saturday between 10.00 a.m. to 12.00 noon till the charge is framed and after the charge is framed, the Special Court to impose the condition of marking attendance in the Special Court so as to ensure that he is available for trial.

5. I record my appreciation towards Ms.D'Souza, learned counsel representing the complainant. Legal fees/ remuneration due to her, should be paid by the Legal Services Authority.

SMT. BHARATI DANGRE, J.