

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.695 OF 2021

Javed Hussain Pathan

...Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Vishwanath Patil a/w Mr.Ankit Lodha for the Applicant.

Mr.Y.Y. Dabke, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 11 MARCH 2022

P.C.

. By this Application, the Applicant is seeking bail, in Crime No.39 of 2019 registered with Khopoli Taluka Police Station, under Section 376(2)(i) of Indian Penal Code and Section 3(a), 4 of the Protection of Children from Sexual Offences Act, 2012.

2. The aforesaid offence is registered on the basis of the complaint lodged by the mother of the victim girl. The victim at the relevant time was stated to be 13 years of age. According to the informant the victim was forcibly taken by the Applicant who is a neighbor, in a deserted house and had forcibly sexual intercourse with her on 25 February 2019 at about 2.00 p.m.

3. The FIR came to be lodged on 26 February 2019 at 00.09 hours after which the victim was subjected to medical examination during the same night. On the basis of the complaint offence came to be registered and after investigation a charge-sheet is filed. The Applicant was arrested on 25 February 2019 and is in jail since then.

4. I have heard learned counsel for the parties. Perused record.

5. Prima facie it appears that the allegation made by the informant and the victim is not supported by the medical evidence. Although victim stated that she was dragged by the Applicant and was subjected to forcible sexual intercourse while she was menstruating, the medical report does not show any injury on her person or her private parts. In fact the report of the medical examination is totally silent about the any finding of the victim being subjected to sexual intercourse.

6. The learned Sessions Judge has noted that an affidavit is filed by the mother and the brother of the victim, that they are not sure whether any such act was done by the Applicant. It is not necessary to consider any such affidavits, at this stage, inasmuch as the medical evidence does not support the allegation of the sexual abuse of the informant. The investigation is

complete and the charge-sheet is filed and the applicant is in custody for close to three years now.

7. In such circumstances, the following order is passed.

ORDER

- (i) The applicant-Javed Hussain Pathan be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.
- (ii) The applicant shall undertake to remain present before the learned Special Judge during the trial, unless exempted.
- (iii) The applicant shall not tamper with the prosecution evidence/witnesses.
- (iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.
- (v) The bail bonds to be furnished before the learned Special Judge.
- (vi) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.