

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1707 OF 2021

Madhu Dharma Govari] ... Applicant

Vs.

The State of Maharashtra] ... Respondent

...

Mr. Vijay Kurlle for the applicant.

Ms. A.A. Palkar, A.P.P. for the State.

Ms. Amita Kuttikrishnan for the complainant.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 10TH JUNE, 2022.

P.C.:-

1. The applicant is charge-sheeted for an offence punishable under Section 377 of the IPC and Sections 3 and 4 of the POCSO Act. The charge is faced by the applicant in C.R. No.431 of 2020 registered with Vasai Police Station at the instance of the complainant, aged 14 years, who stated in

his complaint that he is residing in the neighbourhood of the applicant and is well acquainted with him.

2. On 12/12/2020, when he along with his friends was feeding the pigeons, the applicant called him on the terrace, on the pretext of assisting him in removing the feathers of pigeons and he was asked to come alone. After informally indulging him into some talk, he was taken down in a room and his hands were tied and he was subjected to unnatural intercourse, the details of which are narrated by the complainant in his complaint. He was threatened not to report the incident to anyone. He rushed to his house and since his mother was not at home, he informed his aunt about the incident and subsequently the complaint came to be lodged.

3. The complainant was referred for medical examination and the medical report from the MCGM's Hospital is placed on record, which clearly records the finding to the following effect.

“Redness present at 3 O’clock and 9 O’clock at anal verge. Mild tenderness rectal tone is normal. No evidence of anal fissure.”

4. The statement of the victim boy is recorded under Section 164 of the Cr.P.C., where he reiterates the narration in his complaint. Another statement, which came to be recorded by the Magistrate under Section 164 of the Cr.P.C. is of a friend of the

complainant, who stated that he was called by the applicant on the terrace, while other boys continued to play cricket on the ground.

5. The material compiled in the charge-sheet *prima facie* establishes the offence punishable under Section 377 of the IPC and Sections 3 and 4 of the POCSO Act.

6. The learned counsel for the applicant vehemently submits about the improbability of the incident being taking place during the day, when his daughters were present in the house. He would submit that the statement of none of his family members was recorded.

7. The aforesaid argument does not warrant any consideration, since the material compiled in the charge-sheet, at present, holds sufficient force to continue the incarceration of the applicant, firstly on the ground that the offence is a serious one, when the applicant has indulged with a minor boy of 14 years and the truthfulness and veracity of the accusation can be tested at the time of trial, when the witnesses enter into the witness box. At present, suffice it to say that his statement recorded under Section 164 of the Cr.P.C. is in sync with his complaint. The medical report also supports the case of the prosecution. Merely because the applicant has prayed for sympathy on account of his two young daughters being

without any family assistance, is no ground to release him on bail.

8. The application is, therefore, rejected.

[SMT. BHARATI DANGRE, J.]