

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3260 OF 2021

Roshanlal Hanuman Srivastav	...Applicant
Versus	
The State Of Maharashtra	...Respondent

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Mr. R. M. Upadhyay, Advocate for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 17th MARCH, 2022

PER COURT:

1. This is an application for bail in connection with C.R. No.85 of 2020 registered with Vileparle Police Station, Mumbai for offences under Section 376 Indian Penal Code (for short “IPC”) and Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). The First Information Report (for short “FIR”) was registered on 22nd May, 2022.

2. The case of the prosecution is that on 21st March, 2020, the victim girl was dragged by the accused in public toilet and he fingered her private part. The victim and the complainant (mother of victim) left house to trace the accused. On the way the victim has pointed out the accused. He was questioned by complainant. He disclosed his name and ran away from the spot.

3. The applicant was arrested on 28th March, 2020. On completing investigation, charge-sheet was filed.

4. The applicant had preferred an application for bail before this Court. The said application was withdrawn vide order dated 14th January, 2021. It was contended at that point of time that the applicant is young boy aged about 19 years. He is student. The charge is not yet framed. The application was allowed to be withdrawn with liberty to prefer fresh application for bail in the event the trial is not concluded within 6 months.

5. The applicant had thereafter preferred application for temporary bail on medical ground before the Court of Sessions. The said application has been rejected by order dated 2nd March, 2022.

6. Learned Advocate for the applicant submitted that the applicant is in custody from 28th March, 2020. He is in jail for a period of about 2 years. There is no progress in the trial. He is 19 year old boy. He is a student. There are contradictions in the versions of the victim and other witnesses. The applicant cannot be incarcerated in custody for indefinite period.

7. Learned APP submitted that the specific role has been attributed to the applicant. He has been named in the FIR. He has sexually assaulted victim. Victim is minor aged around seven years

at the time of incident. Case is is due for framing charge.

8. By order dated 14th January, 2021 it was directed that in the event the trial is not concluded within 6 months, the applicant can prefer fresh application for bail. While disposing of the previous application, this Court had not made observations on the merits of the case. There is no progress in the trial. The charge is not yet framed.

9. The applicant was aged around 19 years at the time of incident. The FIR lodged by the mother of victim. It is alleged that on 21st March, 2020 the accused dragged the victim to the toilet and moved his hand on the private part of the victim and fingered it. The FIR was registered on 22nd March, 2020. Statement of victim was recorded on 27th March, 2020. The victim was examined by the Medical Officer. The medical case papers mentions that, history was provided by the mother of victim, stating that the accused had touched the private part of the victim by taking her in toilet. The history recorded on 23rd March, 2020 however mentions that the accused had penetrated the finger in the vaginal opening of victim. The medical report submitted by the hospital mentions that the victim was dragged in the public toilet by unknown boy aged about 19 years named Roshanlal

Srivastava and he touched the private part of the victim. The medical report refers to nature of act performed by the accused indicating that the accused had touched the private part of the victim. The report also mentions that there is no evidence of any injury. No injuries were noticed on the private part of the victim. Hence, there are contradictions in the nature of the act attributed to the accused. The applicant is in custody for a period of about 2 years. The complainant has stated that, after the incident she left house with victim to trace, the accused. The victim pointed of accused. The complainant spoke to him and he disclosed his name and ran away. It is difficult to believe that, while the victim is with complainant in the event the alleged act is committed, he would disclose his name and flee from the spot. There are no criminal antecedents against applicant. Liberty was granted to applicant to prefer application for bail in the event trial is not concluded in 6 months. The period of 6 months is over in July – 2021. May be due to lock-down and various other circumstances, the trial could not be concluded. However, the applicant is in custody for two years. Charge is not yet framed. It is not clear as to when the trial would would be concluded.

10. Taking into consideration the aforesaid circumstances,

bail can be granted to the certain terms and conditions.

11. Hence, I pass the following order :

ORDER

- i.** Criminal Bail Application No. 3260 of 2021 is allowed;
- ii.** The applicant is directed to be released on bail in connection with C.R. No.85 of 2020 registered with Vileparle Police Station, Mumbai on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii.** The applicant shall report Vileparle Police Station once in month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- iv.** The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- v.** The applicant shall not tamper with the evidence.
- vi.** The applicant shall not approach the victim or her family members.
- vii.** The applicant shall not cause harassment of any nature to the victim and her family members.
- viii.** Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)