

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 3665 / 2021

Rishi Karamvirsingh Dhaka

... Applicant

Versus

The State of Maharashtra and Anr.

... Respondents

Mr. Prashant G. Pandey a/w Mr. Irfan Unwalla i/by W3Legal LLP,
Advocate for the Applicant.

Smt. A.A. Takalkar, APP for State/ Respondent No.1.

Ms. Gauri Velankar, Advocate for Respondent No.2.

Mr. Vijay Maladkar, PSI, Dahisar Police Station.

CORAM : SANDEEP K. SHINDE, J.

DATE : 1st MARCH, 2022.

P.C.

1. It is second bail application. The first application was rejected on 10th December, 2019. Applicant is facing prosecution for the offences punishable under Section 376(2)(n) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO for short).

2. In brief, Prosecution case is that; victim (Complainant) and the Applicant were accused in Crime No. 2119/2018 dated 8th June, 2018 under Section 379 of the IPC, for alleged indulgence into stealing of mobile phones. About fourteen crimes to similar nature, have been registered against both. Complainant was arrested in the said crime. Whilst in a judicial custody, her confession was recorded by the learned Magistrate on 11th June, 2018. Wherein, she disclosed, when, how and where she was subjected to penetrative sexual assault by the Applicant. At the material time, she was minor. Also she alleged that she forced to satisfy physical desire of his friends. Whereafter on 19th September, 2018 (nearly three months after recording confession), the Crime No. 616/2018 came to be registered against the Applicant under Section 376(2)(n) of IPC and Section 4, 8 and 12 of POCSO. Applicant was arrested therein, on 9th October, 2018. It may be noted, although the offences committed by the Applicant, under POCSO, were disclosed on 11th June, 2018, Complainants' medical examination was done on 30th October, 2018 i.e. nearly after four months and three weeks. Thus, when inquired with the learned Prosecutor, as to why the victim was not medically

examined, soon after the offence was disclosed, however, learned Prosecutor could not explain the delay. Additionally, there is no acceptable explanation for registering the offence in September, 2018, although it was disclosed in June, 2018. Therefore, prima facie, unexplained delay in lodging the FIR and medical examination of the victim, renders the Prosecution case indefinite. Applicant is in custody since 9th October, 2018. Investigation in the case is over and charge-sheet has been filed; yet the charge has not been framed. Orders on record show that the Applicant has been acquitted of the offence under Section 379 of IPC in view of Section 320(8) of the Code of Criminal Procedure. Furthermore, in victims' narrative to learned Magistrate, while recording the confession; to the Medical Officer; and to Police Officer (FIR), there are discrepancies and disagreement on material allegations. Apart from, victims' parents' statement do not support Prosecution. Moreover, final report does not suggest that victim was forced to satisfy physical desire of Applicants' friends. Thus, taken over view of the matter, a case is made out for granting bail to the Applicant. Thus, following order.

O R D E R

- (i) The Applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/-, with one or more sureties in the like amount, if not required in other crimes;
- (ii) The Applicant shall furnish particulars of his residential address and permanent address and contact details to the Investigating Officer within seven days from his release from jail;
- (iii) The Applicant shall report to the Investigating Officer, twice a month i.e. 2nd and 4th Monday of each month between 11:00 am. to 01:00 pm., commencing from March, 2022, till the charge is framed;
- (iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

3. Application is allowed and disposed of.

4. It is made clear that observations made hereinabove be construed

as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)

Digitally
signed by
MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM
Date:
2022.03.02
11:16:20
+0530