

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 4074 / 2021

Rishi Karamvir Singh 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.

Mr. Rohan S. Sawant, 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. Herein, Complainant and the Applicant were accused in Crime No. 2119/2018 for the offence punishable under Section 379 of the Indian Penal Code. Both were arrested. Whilst in judicial custody, Complainants' (victim) confession was recorded on 11th June, 2018. She confessed that she was subjected

to penetrative sexual assault by the Applicant, when she was minor. On the same day, confession of another victim incidentally a co-accused in Crime No. 2119/2018 was also registered. Be that as it may, Whereafter on 19th September, 2018 (nearly three months after recording confession), the Crime No. 615/2018 came to be registered against the Applicant under Sections 376, 323, 379, 109 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO for short). The Applicant was arrested in this crime on 9th October, 2018.

2. It may be noted, although the offences allegedly, 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, I 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. Furthermore, victims' narrative to to Police Officer, shows that she on her own volition kept physical relations with the Applicant. 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
11:16:05 +0530