

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2217 OF 2021

Imran Hussain Boblai

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Anil M. Dubey i/by Veenu M. Dubey - Advocate for the Applicant
Ms. Khushboo A. Oswal – Appointed Advocate for the Respondent
No. 2.

Mr. S. R. Agarkar- APP for the Respondent-State
API – Chakor - Kalyan Taluka Police Station

CORAM : S. M. MODAK, J.

DATE : 01st AUGUST, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned Advocate for the first informant and learned APP
2. The Applicant is accused of sexual assaulting the victim who is aged about 12 years. She herself is first informant who lodged F.I.R. with Kalyan Taluka Police Station on 30/08/2020. The offence is under Section 376-AB, 506 of the Indian Penal Code and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act came to be registered. Both are the neighbours. The incident took place on 29/08/2020 after 7 p.m. the victim was called by the Applicant on the pretext of assisting him for some household

work. After the victim went to the house of the Applicant, he misbehaved with her and removed her clothes and then commits act which attracts the provisions of the Section 3 of the Protection of Children from Sexual Offences Act. Charge-sheet is filed and he is behind bar since August, 2020.

3. There are two contentions. One is about merits and second is about long delay in conducting the trial. Old roznama is of the year 2021 is produced which mentions that it is at the stage of the framing of the charges. No recent roznama is produced.

4. Number of the contentions are raised. So to say the provisions of Section 376-AB and Section 4 are not attracted. It is contended that version given by the victim in the F.I.R. is not supported by medical evidence. The medical case papers are from page no. 71 to page no. 80. My attention is also invited to the statement of the daughter of the Applicant. It is on page no. 109. She has stated that nothing objectionable has happened in the house but victim simply came and Applicant lifted her and she moved the fan and left. Her statement further mentions that she has left the house and when she returned, she saw the quarrel going on in between the adjoining residents and her father. It is on account of some misdeeds done with the victim.

5. As against this, according to the learned APP and learned Advocate for the first informant the penetration to the fullest extent is not required and clause no. (a) and clause no. (b) of Section 3 of the Protection of Children from Sexual Offences Act mentions about certain acts and according to them the allegation in the F.I.R. falls under those category.

6. I am *prima-facie* opinion that those acts falls under Section 3 of the Protection of Children from Sexual Offences Act which is punishable under Section 4. There is a statement of the brother of the victim, when he was searching for his sister that is victim and when he knocked the door of the house of the present Applicant, he has replied that the victim is not there and after sometime when brother again came there, he saw the victim sitting in the house of the Applicant. Thereafter, the victim has narrated the incident to the brother and to the teacher and thereafter to her mother.

7. So considering the above materials, it is disclosed the involvement of this Applicant. Issue about corroboration in between the oral testimonies and medical evidence cannot be gone into at this stage. The trial Court will be the proper forum. Similarly, the prosecution evidence on one hand and statement of the daughter of

the Applicant on the other hand, whether there is inconsistencies or not cannot be gone at this stage. So on merits, I am not inclined to grant him bail. Certain humanitarian grounds are pressed. It deals with the death of the wife of the Applicant and two children and there is no one to look after them. They cannot be pressed when merits is against the Applicant. I think until now the trial Court ought to have framed the charges against the Applicant. So direction can be given to the trial Court. At the same time, liberty can be granted to the Applicant to move again, if there is no progress. In view of that following order is passed:-

ORDER

- (i) Bail Application is dismissed.
- (ii) The trial court seized of this matter is directed to frame charges against the Applicant, if it is not framed earlier.
- (iii) Let priority be given to this matter and an endeavour should be made to dispose of finally as early as possible.
- (iv) The Applicant also to place copy of this order before the trial Court.
- (v) The Applicant is granted liberty to apply again after six months. Trial Court be informed about this Order.

[S. M. MODAK, J.]