

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

CRIMINAL BAIL APPLICATION NO.2975 OF 2017

Krushna Dilip Waghmare

..Applicant

vs.

The State of Maharashtra

...Respondent

Mr.Adwait Bhonde for the Applicant .

Mr. Vinod Chate, APP for the Respondent.

CORAM : P. N. DESHMUKH, J.

DATE : 28th FEBRUARY, 2018

P.C.:

. Heard learned counsel for the applicant and learned APP. This application is for grant of bail of accused who is maternal uncle of prosecutrix aged 11 years and 11 months involved in C.R. No.54/2017 for the offence punishable under section 376(2) of the IPC and sections 4 and 5 (n) of the POCSO Act, 2012 registered at Chakan Police Station, Pune.

2. Mr. Bhonde, Learned counsel for the applicant submitted that applicant is falsely involved in belated report which came to be lodged on 28/7/2017. The incident is alleged to have been committed on 28/6/2017 to 30/6/2017. To substantiate the case of false implication of the applicant, learned counsel by referring to the medical evidence contended that according to the Doctor no evidence of sexual intercourse or injury is noted upon the body of the prosecutrix or on her private part and has therefore contended that merely on the basis of statement of minor victim and her brother, no involvement of applicant is established in the present crime. He submits that even otherwise the statements are contrary to each other and since the investigation is completed and charge-sheet is filed applicant be released on bail by imposing

conditions.

3. Mr.Chate, learned APP opposed the application and submitted that delay whatever is caused in lodging report has been sufficiently explained in the report. It is further submitted that there is no reason to disbelieve the version of prosecutrix who is aged 11 years and 11 months to falsely implicate maternal uncle. About having no injuries found on the person of prosecutrix, it is pointed that the prosecutrix was referred for medical examination after a long gap and as such no injuries were possibly found on her person or on her private part. It is therefore submitted that application be rejected.

4. Perusal of report lodged by mother of prosecutrix reveals that on 27/7/2017 while prosecutrix was alone in the house being holiday to her school on that date at about 9.00 a.m. she informed her mother that applicant used to bother her by touching her inappropriately and further disclosed that in last week of June while she was alone in the house applicant committed sexual intercourse with her which she did not disclose to anyone as she was scared.

5. Above contents of report were referred by learned counsel for the applicant and an attempt is made to co-related these contents with the statement of one of the friends of prosecutrix, who is also a minor girl and by reading her statement it is submitted that she claims to have received knowledge of involvement of applicant as aforesaid, as stated to her by prosecutrix and therefore submitted that contents of report therefore cannot be relied upon . However, above submission do not find any substance considering the age of prosecutrix as well as of her friend who is also of same age. What is material is after having been subjected to sexual intercourse at the hands of applicant though late, the minor girl has

disclosed such activities of applicant to her mother on 27/7/2017 and in that view of the matter as there is substantial delay of her complaining about the act of accused to her mother and the period during which applicant sexually assaulted her. There is every possibility of having no injuries on the person of prosecutrix. In the circumstances fact of delay in lodging FIR as well as of non finding of injuries on the person of prosecutrix cannot be said to be material which can be considered in favour of the applicant.

6. In fact from the statement of prosecutrix and her minor brother, applicant's conduct is notable of visiting house of prosecutrix, sending her minor brother to buy sweets and on getting confirmed that her brother is not in home indulging in such act. Learned counsel for the applicant though has also submitted that on neither of the occasion prosecutrix has resisted such act, there is no substance in the said submission in view of the fact that a minor girl aged 11 years can hardly resist any act committed upon her by a full grown male aged 25 years.

7. In view of evidence as aforesaid, there is no merit in the application. Application is therefore rejected.

(P.N. DESHMUKH, J)