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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2044 OF 2015

Lala Mohammed Fhakir

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Mateen Shaikh i/b M.S. Shaikh for applicant.

Ms. Rutuja Ambekar for State.

CORAM: A.S. GADKARI, J.

DATE : 26th September 2016.

P.C.

1 This is an application under Section 439 of Cr. P.C. for bail in CR No.215 of 2015 registered with Kurla Police Station, Mumbai dated 15.7.2015 under Sections 354(d) of the Indian Penal Code and under Sections 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 The first information report is lodged by Smt. Yasmin Abdul Kadir Shaikh, Warden of Jafer Suleman Musafirkhana Hostel and Orphange, Kurla. It is stated in the said report that on 14.7.2015 the elder

sister of the victim girl confided with the informant about the alleged sexual assault committed by the applicant on the minor victim girl, aged 11 years at the time of commission of offence. On the basis of the said information, the present crime is registered. After completion of investigation, the police have submitted chargesheet.

3 Heard the learned counsel for the applicant, the learned APP and perused the statements of the complainant and the victim girl recorded by the police and other related documents.

4 The learned counsel for the applicant submitted that assuming for the sake of argument that the entire evidence as collected by the prosecution is to be true, it is only an attempt made by the applicant and therefore Section 354(d) of the Indian Penal Code is applied to the present crime. That in view of the age of the victim girl, the provisions of POCSO Act are also added.

4 Heard the learned counsel for the applicant, the learned APP and perused the statements of the complainant and the victim girl recorded by the police and other related documents. After perusal of the said statements, prima facie, I find substance in the contention of the learned counsel for the applicant. The applicant is arrested on 15.7.2015 and since then he is in jail. In view of the peculiar facts of the present case, the

applicant has made out a case for his release on bail.

5 The learned APP submitted that the applicant was working as a watchman in the said Hostel and Orphanage and by taking undue advantage of his position, he has committed the present crime. She further submitted that if the applicant is released on bail, he may either tamper with the evidence and/or threaten the prosecution witnesses. As far the said apprehension of the prosecution is concerned, the same can be taken care of by imposing stringent conditions upon the applicant.

6 Hence, the following Order:

(i) The applicant be released on bail CR CR No.215 of 2015 registered with Kurla Police Station, Mumbai on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

(ii) After his release from the jail, the applicant shall not enter the jurisdiction of Kurla Police Station except for marking his attendance on the stipulated dates as mentioned hereinbelow.

(iii) After his release from the jail, the applicant shall attend the Kurla Police Station, Mumbai once in month i.e. on every 1st Monday of the said month between 11.00 a.m. to 2.00 p.m.

(iv) The applicant shall also attend all dates before the Trial Court.

(v) Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail.

(vi) Before his release from jail, the applicant shall provide his proposed residential address where he intends to reside after release from jail to the Kurla Police Station.

7 The Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)