

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1367 OF 2017

**SHABIB AHMED MOMIN @ SHABIB AHMED)
GHULAM MOHD. MOMIN)...APPLICANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.N.M.Baig, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent – State.

Police Sub-Inspector Dukhande, Bandra Police Station, present in court.

CORAM : A. M. BADAR, J.

DATE : 8th NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.133 of 2017 registered with Police Station Bandra, for offences punishable under Sections 354 and 354A of the Indian Penal Code (IPC) and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act), by this application, is seeking his release on bail, after filing of the charge-sheet.

2 Heard the learned advocate appearing for the applicant / accused. By showing the file of medical papers of the applicant / accused, the learned advocate argued that the applicant / accused is suffering from heart ailment. She further argued that identity of the present applicant / accused is in dispute as witnesses are referring the accused by name Shabbir Chacha and Shabib. The learned advocate further argued that medical history given to the attending Medical Officer is divergent and mother of the victim had spoken about penetrative sexual assault on the victim. With this, the learned advocate for the applicant / accused submitted that the applicant / accused is entitled for bail.

3 The learned APP opposed the application by pointing out statement of Bashir Ahmed, who is real brother of the present applicant / accused in order to demonstrate that there cannot be dispute in respect of identity of the applicant / accused as the perpetrator of the crime.

4 I have carefully considered the rival submissions and also perused the charge-sheet. The victim of the crime in question is a female child aged about 5 years, who at the relevant time, was taking education in Senior KG, at Dorello Convent High School. The FIR came to be lodged by her mother on 29th March 2017.

5 During the course of investigation, statement of the female child came to be recorded on 18th April 2017 by the learned Metropolitan Magistrate. The applicant / accused is stated to be driver of the school van in which the victim female child used to go to the school and return from the school. The minor female victim in her statement has stated that the school van used to be driven by Shabib uncle. She stated that Shabib uncle used to sit near her and used to caress her vagina as well as her back. This, according to the minor female victim, was happening from the time when she was attending the school by the school van. She further stated that Shabib uncle had threatened her not to disclose the incidents happening with her to anybody else, or else, he would kill her.

6 On 29th March 2017, the mother of the minor female victim reported to police that on 27th March 2017 her 5 years old daughter disclosed her that Shabib used to sit near her and used to caress her vagina as well as the back, since long. The minor female victim had also spoken about threats extended by the applicant / accused to her mother. The FIR shows that the applicant / accused was questioned by the First Informant (mother of the victim girl) and her mother-in-law on 29th March 2017. On that day, the minor female victim was again sent to the school by school van driven by the driver named Shabib Shaikh, by her mother. On return, she was found to be in a frightened condition. She was weeping profusely. Her mother noticed her condition and asked her as to what had happened with her. The minor female victim then again disclosed to her mother that on that day also, Shabib uncle had molested her sexually. This prompted the mother to approach the police by lodging the subject FIR.

7 Shahanawaz is maternal uncle of the minor female victim. He referred the applicant / accused as Shabbir chacha on the basis of disclosure to him by a telephonic call by the First Informant. However, the First Informant (mother) had referred the applicant / accused as driver on the school van having name Shabib Shaikh. He has given registration number of the school van in the FIR. Bashir Ahmed, who is brother of the present applicant / accused, has stated that his younger brother named Shabib was driving the said van of which the registration number is mentioned in the FIR. In this view of the matter, at the pre-trial stage, it cannot be said that there is dispute regarding identity of the accused.

8 This is one more case of sexual molestation of a very young female child noticed by this court. Parents of the tiny tots entrust them with utmost confidence to the driver of the vehicle for reaching them and bringing them back from the school. They feel that their children are in safe hands. The case in hand reflects breach of the trust reposed by the parents of tiny tots on drivers of

the school van. Taking advantage of such entrustment of children to him, it is seen that the applicant / accused had committed sexual assault on the minor female victim aged about 5 years and repeated commission of such sexual assault despite warning by the mother and the grandmother of the victim child. The mental and psychological trauma of such sexual assault troubles the minor female child throughout her life resulting in depression, anxiety and post traumatic stress disorder. Such sex abuse is a particular sinister type of trauma because of the shame it instills in the victim, which lasts throughout the life.

9 Though it is averred that the applicant / accused is suffering from heart ailment, report of his Transesophageal Echocardiography done on 12th November 2010 shows that there was no clot or vegetation and there was normal biventricular contractility. This report does not show any such ailment suffered by the applicant / accused and it is prior to about seven years from the date of the incident.

10 Considering the nature of the crime and its impact on the victim, her parents and the entire society, no case for grant of bail is made out. Hence the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)