

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

CRIMINAL BAIL APPLICATION NO. 2252 OF 2016

Imamuddin @ Imambhai Lutfur Rehman. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Ms. Mallika A. Ingale, advocate for Applicant.

Ms. J.S. Lohokare, APP for State.

Mr. Babar Shinde, P.S.I. Trombay Police Station.

CORAM : SMT. SADHANA S. JADHAV, J

DATE : FEBRUARY 10, 2017

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 23/5/2016 in Crime No. 134 of 2016 registered at Trombay Police Station on

23/5/2016 for offence punishable under section 377 of the Indian Penal Code and Section 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012. The investigation is completed and charge-sheet is filed in July, 2016.

3 It is the case of the prosecution that on 23/5/2016 one Sabina Khatun Salauddin Khan lodged a report at the police station alleging therein that on that day at about 9 a.m. she woke her son Abdula aged 4 and ½ years old. He had informed his mother that he has pain in his anus. He continued to cry. She was disturbed by his crying. While cleaning his anus, she realised that there was inflammation on the said portion. Subsequently, upon enquiry he informed his mother that on 21st May, 2016, the present applicant who happens to be the teacher in the Madarsa where the boys are studying had taken him to a corner and had sexually abused him by having penetration. The child was taken to hospital on 23rd May, 2016. The examination reports show that the child had no fresh injuries on his person. The history was narrated by the victim and his

parents. Column (J) of the Medical examination reads as follows :
“No evidence of fissure. E/o mild tenderness present. No evidence of injury, no evidence related infracted assault. No evidence of injuries suggestive of application of force or restraint”.

4 The learned Counsel for the applicant submits that the medical evidence does not corroborate with the allegations levelled against the applicant. That the applicant is only 17 years old. Before lodging of FIR the victim was taken to the hospital and there, the doctor had opined, upon examination anus fissure.

5 The investigation is completed and charge-sheet is filed. In the facts of the case, the applicant deserves to be enlarged on bail.

6 The observations are prima facie in nature and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered at the time of hearing of application for discharge or quashing of FIR or at the time trial.

7 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall report to concerned police station on first Sunday of each month till framing of charge.
- (iv) The applicant shall not visit Madarasa where he was teaching till conclusion of trial.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)