

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

CRIMINAL BAIL APPLICATION NO.2458 OF 2018

Aamir Abdul Razzak Shaikh
(At present is in Mumbai Central Prison) .. Applicant
Vs.
State of Maharashtra & Anr. .. Respondents

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Ms.K.R. Shah, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.
Mr.Ujjwal Gandhi, Advocate for Respondent No.2.
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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 5, 2018.

P.C. :

This is an application for bail in connection with C.R.No.95 of 2018, registered with B.K.C. Police Station, Mumbai, for the offences punishable under Sections 354, 354(A), 323, 504 of Indian Penal Code (“IPC”, for short) and Sections 8 and 12 of Protection of Children From Sexual Offences Act (“POCSO Act.”, for short). The applicant was arrested on 6th April, 2018.

2 The prosecution case is that the original complainant is the wife of applicant/accused and they got married on 2005. This was the second marriage of the original complainant. Out of

her first marriage, she was having two daughters, namely, Neha and Naziya Amir Shaikh, aged about 17 years and out of her second marriage (with the applicant), she was having two children, one girl Jia aged about 10 years and one boy Ali aged about 9 years.

3 It is alleged that the applicant was consuming Charas and Ganja and from the last three months, applicant/accused was unemployed and was demanding money from the original complainant for smoking Charas and Ganja. It is further alleged that the applicant doubted the character of the complainant and used to quarrel with her.

4 It is further alleged that on 3rd April, 2018, at about 8:00 p.m., the applicant again quarreled with the complainant and drove her out of her matrimonial house. Thereafter, the complainant went to the house of Rubina in the night. On the next morning, all the four children came to the working place of the complainant and the younger daughter Jia told that on 3rd April, 2018, at around 11:00 p.m., when she was sleeping, the applicant had touched her chest, and when she resisted that applicant got annoyed and slapped her. It is also alleged by the step daughter

of the applicant, Naziya that the applicant also molested her by touching her chest one month ago.

5 Learned counsel for the applicant submitted that the dispute between the complainant and the applicant is amicably settled and the original complainant has tendered an affidavit dated 5th October, 2018. It is submitted that the complainant is present in the Court. It is submitted that the investigation is completed and the charge-sheet is filed. Applicant is in custody since last five months. The family of the applicant and the complainant wants to live peacefully. It is submitted that the offences was punishable up to three years.

6 Learned APP submitted that complainant is present in the Court. Learned APP submitted that the complainant is the wife of applicant. She had lodged complaint dated 6th April, 2018. It is further submitted that the statement of victim was recorded by the police during investigation. Investigation is completed and charge - sheet is filed.

7 Complainant is present in the Court. She is identified by the advocate representing her. In the affidavit tendered by her,

she has stated that the applicant is her husband and the complaint was lodged against him. Due to misunderstanding, the complaint has been lodged. She do not wish to pursue this case against her husband and want to live peaceful life with applicant. Apparently, there was dispute between applicant and complainant and the grievance was made by victim to the complainant after she was allegedly driven out of matrimonial home by applicant. She has also stated that she herself and children have no objection if her husband (applicant) is released on bail. Affidavit dated 5th October, 2018, is taken on record and marked “X” for identification.

8 It is noted that the allegations against the applicant were that he had abused the victims who are his daughters. The complaint was lodged by his wife who has tendered the aforesaid affidavit. The offences were relating to outraging modesty and consequently for violation of provisions of the POCSO Act. Applicant is in custody since last five months and charge - sheet has been filed. In the aforesaid circumstances, bail can be granted to the applicant.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2458 of 2018, is allowed;
- (ii) Applicants are directed to be released on bail in connection with C.R.No.95 of 2018, registered with B.K.C. Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall attend B.K.C. Police Station, Mumbai, on first Saturday of every month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) Bail Application No.2458 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)