

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

BAIL APPLICATION NO. 1862 OF 2019

Shahbaz Ahemad Usmani & Anr. ...Applicants
V/s.
The State of MaharashtraRespondent

Ms Nazneen Aalil a/w Adil Khatri for the Applicants.
Rutuja Ambekar, APP for the State.
Psi-Vinod Gosavi a/w Imran Shaikh, D.N. Nagar Police Station.

CORAM : SANDEEP K. SHINDE, J.
DATE : 13th DECEMBER, 2019.

PC.

Heard.

2. The Applicants are seeking their enlargement on bail in Crime No. 20/2019 registered with the D. N. Nagar Police Station under Sections 354, 323, 506 and 34 of the Indian Penal Code read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

3. The Victim is 15 years old. Applicant No.2 is her mother; whereas Applicant No.1 is her maternal uncle. The father (Complainant) of the victim is ordinarily working at Saudi Arabiya for his livelihood. Victim's mother has filed proceedings under the

Domestic Violence Act against her husband in the year 2007.

4. The victim alleged that her maternal uncle in presence of her mother molested and sexually assaulted her, over a period of 6 months, when her father was in Saudi Arabiya. Though, the victim complaints her mother, she did not budge. Victim reported the incidence to her father when he came to India from Saudi Arabiya. She addressed one note to police *inter-alia* narrating how her mother and maternal uncle were sexually harassing her. This note was seized by the police on 16th January, 2019 followed by the registration of subject crime and arrest of the Applicants.

5. Learned Counsel for the Applicants submits that the investigation is over and charge-sheet is filed. Applicant No.1 has permanent place of residence at Pune and the his presence can be secured for trial by imposing conditions. The Applicants are falsely implicated in retaliation to the proceedings filed under the Domestic Violence Act. It is submitted that dispute lies between the parents of the victim over a property. Reliance is placed on the averments made in the complaint filed under the Domestic Violence Act.

6. Learned Counsel for the Applicants submits that Applicant No.1 (maternal uncle of the victim) ordinarily not residing in India and

he works for livelihood in the other countries. Bail is sought on the aforesaid grounds.

7. Punishment for the sexual assault shall not be less than three years but which may extend to five years; whereas punishment for sexual harassment may extend to three years and shall also be liable to fine.

8. Victim is a school going child and it is not prosecution's case that she was confined in the house by her mother. If she could write a note on the basis of which the offence was registered at the instance of her father, she could have made the grievance by similar mode before arrival of her father in India. It is only after her father's arrival in India on the basis of a written note the subject offence came to be registered. The allegations are to be appreciated in the backdrop of the constrained relationship between parents of the victim.

9. In view of the facts of the case, the Applicants is directed to be released on bail on the following terms and the conditions.

ORDER

i) The Applicants in the Crime No. 20 of 2019 registered with the D. N. Nagar Police Station for the offences punishable under Sections 354, 323, 506 and 34 of the Indian Penal Code read with

Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, they shall be released on bail, on executing P. R. Bond in the sum of Rs. 20,000/- each with one or more sureties in the like amount;

ii) The Applicants shall furnish particulars of their residential address and the mobile number to the Investigating Officer within ten days from their release on bail.

iii) Applicant No. 1 shall report to the concerned Police Station once in a month. Applicant No. 2 shall report to the concerned Police Station on 15th day of every month commencing from January 2020.

iv) Applicant No. 1 shall file an affidavit that he shall not leave the country without permission of the Trial Court. The affidavit shall be filed within ten days from his release on bail.

10. List the Application on 14/01/2020 for compliance.

(SANDEEP K. SHINDE, J.)