

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

BAIL APPLICATION NO.2081 OF 2019

Shahjad @ Shahzad Amiruddin
Ansari

... Applicant

Vs

The State of Maharashtra

... Respondents

Mr. S.V.Marwadi along with Mr. N.M.Nadar for the
Applicant.

Mrs. Rutuja Ambekar , APP for the Respondent-State.

Mr. Shriram Palve attached to Ambolij Police Station,
Mumbai present.

CORAM : SANDEEP K. SHINDE J.
DATE : 26th NOVEMBER, 2019

P.C. :

Applicant is seeking enlargement on bail in
Special Case No.237 of 2015 in Crime No.335 of 2015
registered with Amboli Police Station for the alleged
offences punishable under Sections 376, 354, 506II and 363
of the Indian Penal Code, 1860 ('**IPC**' for short) read with
Section 4, 8, 12 of the Protection of Children from Sexual
Offences Act, 2012 ('**POCSO**' for short).

2 It is alleged, two victims of 8 years old were subjected to sexual assault. Applicant was apprehended on 31st October, 2015. Investigation is over and the case is pending before the Special Court.

3 Heard Mr. Marwadi, the learned counsel for the applicant and the learned APP for the State.

4 Mr. Marwadi points out tentative diagnostic formulation of the applicant-accused; a report of the Masina Institute of Psycho-therapy. It appears applicant was examined in August, 2010 and thus, reported;

“Psychometric evaluation, case history and behavioral observations are suggestive of SCHIZOPHRENIA”

. Relying on this report, Mr. Marwadi submits the applicant requires treatment as he is suffering from Schizophrenia. He, therefore, urged the State may be directed to call medical report of the applicant qua his illness, schizophrenia. He invited my attention to the

provisions of Section 330 of the Code of Criminal Procedure, 1973 (**'Cr.P.C.'** for short), which empowers the Court to release a person of unsound mind pending investigation or trial. Prima-facie, provisions of Section 330 are applicable or could be invoked whenever a person is found under Sections 328 or 329 of the Cr.P.C. to be incapable of entering a defence by reason of unsoundness of mind or mental retardation. The Court may after taking into consideration the case, order release of such person on bail. Prima-facie, these powers are to be exercised by the Trial Court pending investigation or trial. In this case, investigation is over and, therefore, if application is filed by the applicant before the Trial Court seeking his release, on the ground of illness, either invoking provisions of Section 330 of the Code of Criminal Procedure, 1973 or otherwise, trial Court shall decide the said application on its own merits preferably within three months from framing charge. The learned Trial Court shall frame the charge within a

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month from today.

5 With these observations, application is
disposed of.

6 It is made clear that this Court has not heard
the application on merits.

(SANDEEP K. SHINDE, J.)