

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

CRIMINAL BAIL APPLICATION NO. 2784 OF 2019

Saddam Kamal Khan ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ms. Anjali Patil, Advocate for the Applicant.
Mr. S.R. Agarkar, A.P.P. for the Respondent-State.
Mr. Jaysing Jaybhaye, P.S.I., Shivajinagar Police
Station.

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CORAM : SANDEEP. K. SHINDE, J.
DATE : 30th JANUARY, 2020.

P.C.

Heard.

2. Applicant is seeking enlargement on bail in Crime No. I - 293 of 2019 registered with Shivajinagar Police Station, Mumbai for the alleged offences punishable under Sections 376(2)(n), 356, 506(2) of the Indian Penal Code, 1860 ('IPC' for short) and under Sections 4,6, 8, 10, 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

3. Victim is 16 years and 4 months old as is evident from her birth certificate whereas the Applicant is 26 years old, married person, living in neighborhood of the victim. The statement of victim recorded under section 24 of POCSO discloses the occurrence of the alleged penetrative sexual assault which is also corroborated by the medical evidence.

4. It is submitted by the learned counsel for the applicant that the victim had attained the age of understanding and that she had voluntarily submitted to the physical desires of the applicant, which could be seen from the statement of witnesses. It is nextly submitted that though the victim was allegedly sexually assaulted on 21st and 25th May, 2019, the victim did not disclose about the incident of alleged sexual assault to her mother until a quarrel ensued between the wife of the applicant and mother of the victim wherein the said incident came to be revealed. It is therefore, submitted that, had the victim being forced to submit to the physical desires of the applicant, she

ought to have disclosed the sexual assault to her mother immediately.

5. The learned counsel for the applicant also placed on the order dated 07th January, 2020 passed in Criminal Bail Application No. 2436/2019 by this Court. In the cited case, the survivor was 17 years plus and the applicant therein was also married person incidentally living in neighborhood of the victim. In the cited case, the offence was registered on the allegation of false promise of marriage. Considering the peculiar facts and the age of the victim in the cited case, the bail was granted to the applicant therein.

6. The learned APP opposed the bail application and relied on the provision of Section 29 and 30 of POCSO which provides that where a person prosecuted though violating any of the provision under Sections 3, 5, 7, 9 of the Act where the victim is child it shall be presumed that a person has committed the offence

unless the contrary is proved.

7. It is not in dispute that the victim is child in this case as defined under Section 2(d) of POCSO. The facts of the case suggest that she had not disclosed about the alleged sexual assault committed by applicant to her mother immediately but it came to be revealed only when the applicant's wife found and noticed her husbands illicit relations with the victim. These circumstances prima facie suggest, the assault was not under force. Having reached the age of 16 years plus and even after the first alleged assault, she had chosen to submit herself to the desire of the applicant on the second occasion thereafter.

8. Additionally, the statements of one Ashia Haleem Khan age 15 years and Zishan Haleem Khan age 08 years also suggest that the victim was voluntarily going to the house of these witnesses, where the alleged sexual assault used to take place. Thus, taking into consideration the above facts and evidence

placed, the application for bail is hereby, allowed on the following terms and conditions.

ORDER

(i) The applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall not live in the jurisdiction of the Shivajinagar police station;

(iii) The applicant shall furnish the particulars of his residential address as well as permanent address and mobile number to the investigating officer within seven days from the date of his release on bail;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

9. The application is allowed in the aforesaid terms and disposed of.

10. It is made clear that observations made hereinabove shall be construed as an expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP. K. SHINDE, J.)