

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3634 OF 2019

Nitin Ganpat Chillore

...Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ashish Dubey, Advocate for the applicant.

Mr. Ajay Patil, APP for Respondent-State.

Mr. Vijay R. Maladkar, P.S.I., Dahisar Police Station.

CORAM : SANDEEP K. SHINDE, J.**Friday, 24th January, 2020.****P.C. :**

1. It is an application under Section 439 r/w 330 of the Code of Criminal Procedure, 1973.

2. Applicant is seeking enlargement on bail in Crime No.270 of 2019 registered with Dahisar Police Station for the alleged offences punishable under Section 376 of the Indian Penal Code, 1860 ("IPC" for short) and Sections 4,6,8,10 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short).

3. The victim 4 years old, is niece of the applicant, who is about 37 years old. On 10th January, 2019 complainant - mother of the victim had lodged the report of sexual assault by the applicant on the victim. Soon thereafter applicant came to be arrested.

4. Heard. learned counsel for the applicant and learned APP for the State.

5. It is alleged that the victim was subjected to aggravated penetrative sexual assault (within the meaning of Section 5 (n) of the POCSO) by the applicant; the punishment for which shall not be less than 10 years but which may extend to imprisonment for life and shall also liable to fine. Thus, the provisions of POCSO are stringent and enacted with due regard for safeguarding the interest and well being of the victim.

6. Keeping in mind the object of the act and

its provisions, let me now revert back to the facts of the case.

7. Herein, victim 4 years old is niece of the applicant. Mother of the victim reported to police, that on 08.06.2019 when victim was alone in the house, the applicant committed penetrative sexual assault by inserting finger into her vagina.

8. Medical reports of the victim, however do not indicate/disclose either vulvo vaginal injuries or hymenal injuries on her person.

9. Be that as it may, learned counsel for the applicant submitted that the applicant has been falsely implicated in this case by victim's mother over a family fued, which is evident from the complaint filed by victim's father. Besides, he has drawn my attention to a certificate issued by the Medical Superintendent, JJ Group of Hospitals, Byculla, dated 12.12.2012, which shows the applicant, was suffering from chronic

schizophrenia - 40 to 70 percentage (disability)
Besides, he has relied on the prescriptions of consulting psychiatrist dated 19th June, 15th September, 1st November 2006, 7th March 2007, 8th August 2007 and 21st November 2007 and also certificate dated 20.06.2019 issued by Dr. Bhatawdekar, psychiatrist.

10. While pointed out that the applicant was under treatment for chronic schizophrenia and was advised to take lifelong antipsychotic medication, Learned counsel for the applicant, contended that the applicant, is a person of unsound mind and therefore seeks his release by taking recourse to provisions of Section 330 of Cr.P.C., which reads as under ;

Section 330. Release of person of unsound mind pending investigation or trial.

(1) Whenever a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or

such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government: Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

11. Whether the applicant is a person of unsound mind or not, is subject to procedure/test contemplated under Section 329 of the Cr.P.C. before his release on bail is ordered. True, that one cannot presume, "unsound state of mind", of a person, but certainly it could be a consideration, in addition to other ground while exercising jurisdiction under Section 439 of Cr.P.C., provided evidence is suggesting his unsound state of mind.

In this case, medical reports do suggest, that the applicant is a person suffering "chronic schizophrenia", which I have no reason to disbelieve.

12. Now let me revert back to examine

contention of the applicant that he has been framed in false case by victim's mother, over a family feud.

13. It may be noted that the victim's father had filed a complaint on 21.06.2019 with police, wherefrom it appears that mother of the victim has had sharp differences with her husband and brother in law in relation to their character and had deserted her husband in past. Equally complaint, also suggests that the complainant had threatened her husband to commit suicide. It is also suggesting that the matrimonial house is jointly owned by brother-in-laws which could be one of the probable cause of disputes and differences. Besides, it has been submitted, that mother-in-law of the complainant died due to kind of allegations made against her son.

14. Thus after perusing the final report of investigation, medical papers of the applicant, medical reports of the victim and the facts disclosed in the complaint filed by the victim's

father, in my view a case is made out for releasing the applicant on bail. Application is allowed on the following conditions.

ORDER

(i) The applicant is directed to be released on bail on executing P.R. Bond for 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 Dahisar Police Station till the charge is framed;

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

(iv) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

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

15. The application is allowed in the aforesaid terms and disposed off.

16. It is made clear that the observations made hereinabove shall be construed as 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.)