

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

CRIMINAL BAIL APPLICATION NO.799 OF 2020

Mohd. Abdul Jalal @ Mohd. Khan Applicant
versus
State of Maharashtra Respondent

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- Mr.Neville D. Deboo i/b Abhay B. Bhoir, Advocate for Applicant.
- Mr.S.H. Yadav, APP for the State/Respondent.
- PSI B.E. Satam present.

CORAM : SARANG V. KOTWAL, J.
DATE : 05th JANUARY, 2021.

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.302/2019 dated 05/06/2019 registered with Goregaon Police Station, under section 354 of the Indian Penal Code and under sections 8 and 10 of The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Applicant is arrested on 07/06/2019 and since then he is in custody. Investigation is over. Charge-sheet is already filed.

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2. Heard Mr.Neville D. Deboo, learned counsel for the Applicant and Mr.S.H. Yadav, learned APP for the State.

3. The FIR is lodged by the Applicant's wife and mother of the victim. The victim is the Applicant's daughter. On the date of the alleged incident, the victim was about 2 years and 3 months of age. The FIR mentions that the informant had married the Applicant 6 years prior to the incident. It was a love marriage. They had three children. But subsequently there was marital discord. It was alleged that, the Applicant was addicted to liquor and used to beat the first informant. The informant was residing separately from the Applicant. The Applicant was residing nearby with his friend Rahul. It is alleged that, on 01/06/2019 and 03/06/2019, the Applicant had taken their daughter to his room for some time. After returning on both these occasions, the daughter was crying. It is the case of first informant that the Applicant had touched her private parts. On these allegations, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the FIR itself shows that the Applicant and the first informant were

not on good terms and therefore to seek revenge and possibly through misunderstanding this FIR is lodged. He submitted that, a two years old child would not be in a position to tell exactly what had happened. The charges are serious and therefore based on some gestures by the two years old victim, it was not proper to keep the Applicant behind bars. He is in custody since 07/06/2019. Investigation is over and trial has not yet commenced.

5. Learned APP on the other hand submitted that the offence is serious and a mother would not be wrong in interpreting the gestures made by the daughter.

6. I have considered these submissions. The investigation is over. The charge-sheet is filed. The charge-sheet understandably does not include statement of victim. Her statement is not recorded because she was merely two years of age and hence was not able to communicate about the incident properly.

7. In this background, the version of the first informant will have to be considered because admittedly the Applicant and the first informant were not on good terms. The first informant already carried a bad impression about the Applicant. I find force in the submissions of learned counsel for the Applicant that the victim's version was open for misinterpretation even by her mother, considering her tender age. This perhaps can be established during the trial. The Applicant is already in custody since 07/06/2019. His custody for investigation purpose is not required. Nothing is shown to the Court to point out whether there were any criminal antecedents against him. In this view of the matter, considering the period which he has already undergone in custody without trial and since the trial is likely to take a long time, even to commence; I am inclined to grant bail to the Applicant on certain conditions. The observations made in this order are strictly restricted to to passing of this order. The trial Court shall not be influenced by these observations while deciding the trial.

8. Hence, the following order :

ORDER

- (i) In connection with C.R.No.302/2019 dated 05/06/2019 registered with Goregaon Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall not enter the vicinity where the first informant and their children are residing.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)