

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1181 OF 2021

Eric Jimmy Anklesaria

Applicant

versus

The State of Maharashtra

Respondent

Mr.Aabad Ponda, Senior Advocate, i/by Mr.Shailesh Kharat for applicant.

Mr.Y.M.Nakhwa, APP, for State.

PSI B.V.Gaonkar, Amboli Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th June 2021

PC :

1. The applicant is seeking bail in CR No.378 of 2020 registered with Amboli Police Station for offences under Sections 354, 419 of Indian Penal Code, under Section 12 of Prevention of Children from Sexual Offences Act, 2012 and under Section 66(c) of Information Technology Act. The applicant was arrested on 23rd December 2020.

2. The case of prosecution, in brief, is that husband of complainant is working with Merchant Navy. On 24th July 2020 the complainant received a call on her cell phone. The caller introduced himself as Doctor Pradhan Joshi and claimed that he is calling from Harkisandas Hospital, Mumbai and her husband had told him that he is suffering from skin infection between his legs which is threatening and contiguous. The caller also stated that he wants to verify whether other family members are infected and due to pandemic situation it is not possible to examine them in hospital and he would check the informant and her son on video call. The caller than instructed the informant to remove the pant of her son aged about

10 years and told her to examine his private part and stated that the child is not suffering from any infection. The maid servant of the informant was also accompanying her. The caller then instructed the informant to remove her cloths and show her thighs. She acted as per his instructions and the caller informed her that there is no infection. At that time, she did not remove her undergarment. Thereafter the informant gave a call to her husband and verified whether he had called in some hospital and her husband told her that he did not make such call. The informant then verified from the hospital to find out whether such person is working in hospital. It was found that no such person was working in the said hospital. Hence FIR was lodged.

3. The applicant was produced before the Court for remand. He was remanded to custody. Investigation proceeded. Charge sheet is filed. The applicant preferred application for bail before the Special Court under POCSO Act. The said application was rejected on 26th February 2021.

4. Learned counsel for applicant submitted that applicant is in custody from 23rd December 2020. Further custody is not required. The maximum punishment for offence u/s.354 IPC is five years. Offence u/s. 419 IPC is punishable with imprisonment of three years. It is bailable offence. Section 12 of POCSO Act and Section 66(C) of I.T.Act are punishable with maximum punishment of three years. Investigation is over. No purpose will be served by detaining the applicant in custody. Section 354 IPC, Section 12 of POCSO Act and Section 66(C) of I.T.Act are not attracted. The applicant had no physical contact with the victim child or the informant. At the most

Section 354(B) is attracted which is bailable in nature. If the allegations in the FIR are to be accepted, it can be inferred that the accused is suffering from mental illness. He is in dire need of medical treatment to get out of the disorder. The mother of applicant has approached the Doctor for advise and on the basis of history given, the Doctor has stated that applicant requires medical treatment and counselling. The medical report about health condition of applicant was called for from jail and the Chief Medical Officer, Thane Central Prison, has submitted report dated 9th June 2021 to this Court. The said report mentions that applicant is known case of Hypothyroidism and Hyperlipidemia and is under treatment for same since 2015 as per papers from private Physician. He is complaining of depression. He is hemodynamically stable today and needs psychiatric evaluation for depression. The applicant was arrested in four other cases in respect to the incidents which had occurred prior to his arrest in the present case. In all the four cases the applicant has been granted bail. It is not the case that applicant has committed the offences after he is being granted bail.

5. Learned APP submitted that the act is serious. The innocent victims were called by applicant and they were victimized. Four other cases are registered against applicant.

6. Intimation about hearing of this application was given to the complainant through concerned Police Station. The first informant/complainant has appeared in person through Video Conferencing and opposed the application for bail. It is submitted that the applicant is now claiming treatment for the disorder but the mother of applicant did not take care in past, which lead him to commit offences. The

offence is serious in nature. The act is dangerous to society. Bail should not be granted to the applicant.

7. The factual aspects of the case are narrated hereinabove. The applicant is in custody from 23rd December 2020. Investigation is complete and charge sheet is filed. Learned counsel for applicant has urged that application of Section 354 IPC, Section 12 of POCSO Act as well as Section 66(C) I.T.Act is debatable. Learned Special Judge has rejected application for bail on the ground that present FIR was registered against applicant on 25th July 2020 and thereafter applicant was involved in another case registered on 10th August 2020. In respect to the incident dated 10th August 2020, the FIR was registered vide FR No.307 of 2020 with Turbhe Police Station. From the documents tendered by the advocate for applicant it is apparent that offences were registered u/s.354(A), 354(D), 417, 419, 509 IPC and u/s.66(C) of I.T.Act. The applicant was granted bail vide order dated 20th December 2020 by learned Magistrate, at Vashi, Navi Mumbai. In CR No.172 of 2020 offences were registered us.354, 354(D)(i), 509 IPC. The offence was registered with Nhava Sheva Police Station. The applicant was granted bail by JMFC, Panvel on 23rd December 2020 on the ground that accused is in judicial custody and his physical custody is not required for further investigation. Nothing was produced on record to substantiate the contention of possibility of interference in investigation or absconding of accused. Whether accused has committed offence will be decided only after trial. It is not certain as to how much time is required for conclusion of case and it would not be just and proper to keep the accused behind the bar till conclusion of case. Considering the prevailing situation of Covid-19 pandemic, it is just and proper to release the

applicant on conditional bail. In CR No.412 of 2020 registered with Worli Police Station, the applicant was granted bail by the Court of learned Metropolitan Magistrate, Dadar, Mumbai considering the fact that offences u/s.354(A), 509 IPC are bailable in nature. The applicant was granted bail in CR No.7 of 2021 vide order dated 28th April 2021 passed by learned Additional Sessions Judge. The offences were registered u/s.354, 509 and 419 of IPC at Vakola Police Station. While granting bail the Court had considered the fact that investigation is complete. The Trial has not started. No purpose would be served by keeping the accused behind bars.

8. Taking into consideration all the aforesaid circumstances, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.378 of 2020 registered with Amboli Police Station on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall attend Amboli Police Station once in a month on every first Saturday of the month between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with the evidence;
- (v) The applicant shall not commit similar offence;
- (vi) If the applicant is involved in any offence after his release on bail, prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)