

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1249 OF 2021**

Sahil Sadikali Bagwan .. Applicant

Vs.

The State of Maharashtra & Anr. .. Respondents

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Mr. Ganesh Gole i/b Aarif Ali M. Ali for the Applicant.

Ms. A.A. Takalkar, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 07TH SEPTEMBER, 2021.

ORDER:-

1. The Applicant came to be arrested on 15/02/2020 in C.R. No.I-37 of 2020 registered with Khadakpada Police Station and came to be charged for the offences punishable under Sections 376AB and 377 of the IPC and Sections 3 and 4 of the POCSO Act.

2. The Applicant seeks his release on bail on the ground of

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his false implication and with a specific ground being advanced to the effect that he is suffering from mild sub-normality in social functioning and from bilateral severe mixed hearing loss and further that his IQ level falls under mild mental retardation.

3. The complaint came to be lodged with the concerned police station on 15/02/2020 by the mother of the victim girl stating that her daughter, who was pursuing her education in 4th standard was dropped at the school gate on the fateful day. At about 12.00 O' clock, she received a telephone call from the teacher in the school, upon which, she rushed to the school. She was informed that her daughter was asked to accompany the Applicant in a building and, on being inside a room, the Applicant had sexually ravaged her and the act of sexual assault was reflected in the FIR. The minor girl also disclosed that two days prior to the incident, she was subjected to a similar treatment at the hands of the Applicant.

4. On registration of the FIR invoking Sections 376AB and 377 of the IPC along with the relevant provisions of the POCSO, the statement of the victim girl was also recorded, where she reiterated the act of sexual assault at the hands of the Applicant and also informed that some ladies rescued her and brought her to the school. The victim was subjected to medical examination after 14 hours of the incident and the report shows vaginal pain after the incident. In column No.18, the report records 'hymen

absent'. In column of provisional medical opinion, the clinical findings are recorded as '*Hymen absent. No fresh injury on hymen. Sexual assault/intercourse cannot be ruled out. No fresh injury at anal site. FSL for anal swab awaited.*' On conduct of the investigation, the Applicant came to be charge-sheeted.

5. The Applicant is undisputedly, a young boy, aged 20 years, but he is charged with a serious offence of committing rape on a girl under 12 years, which is punishable with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life. Further, he is also charged under Section 3 of the POCSO Act, which punishes an act of penetrative sexual assault. Pertinent to note that penetrative sexual assault in terms of Section 3 of the POCSO Act would not only include actual penetration of penis into vagina or to anus of a child, but it would also include an act of inserting to any extent, any object or part of the body, not being the penis, into the vagina, the urethra or anus of the child. The scope of Section 3 of the POCSO Act is wide enough to cover manipulation of any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child. The punishment prescribed for penetrative sexual assault is imprisonment for a term which shall not be less than 10 years, but which may also extend to imprisonment for life.

6. The material compiled in the charge-sheet is sufficient to try the Applicant for the offence with which he is charged. It includes the statement of the mother, the victim as well as the statement of the women, who have rescued the little girl from the clutches of the Applicant. The medical report being supportive of the case of the prosecution, the Applicant does not deserve his release on bail. The submission of learned counsel that the Applicant is suffering from mild sub-normality, however, loses its significance since on the medical examination, it is found that he has no impaired congenital ability, which precludes him from having sexual intercourse. Merely on the pretext that he has a low IQ is no ground to release him on bail. The Application is rejected.

[SMT. BHARATI DANGRE, J.]