

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

BAIL APPLICATION NO.1972 OF 2021

Nooralam @ Nur Alam Mojammel Shaikh ... Applicant
Vs
The State of Maharashtra & Anr. ... Respondents
...

Mr. Mahesh Vaswani with Ms. Shreya Tiwari i/by Ms. Dharini Nagda for the Applicant.

Mr. A.D.Khamkhedkar, APP for the Respondent No.1-State.

Mr. Ashok Pandire, appointed advocate for Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
DATE : DECEMBER 16, 2021

P.C. :

Heard Mr. Vaswani, the learned counsel for the applicant, the learned advocate (Appointed) for the complainant and the learned prosecutor for the State.

2 It is second bail application. The first application was rejected by this Court with liberty to renew his request for bail after a year. As such, this application is filed seeking enlargement on bail

in connection with Crime No.176 of 2018 registered with Bangur Nagar Police Station for the offences punishable under Sections 376(1), 506II of the Indian Penal Code, 1860 and Sections 4,8 and 12 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' for short).

3 Complainant is mother of the victim. Complainant's case is that, applicant subjected her daughter to aggravated penetrative sexual assault within the meaning of Section 3 of the POCSO Act on 22nd May, 2018 in the early morning at 6 a.m. in her house. Admittedly, at the material time, complainant and her second husband were sleeping in the house, which hardly admeasures 100 sq.ft. Whereafter, report was lodged against the applicant and the victim was examined by Doctor. History narrated to the Medical Officer reveals that the victim was subjected to sexual assault by the applicant in past over six months. Medical reports, however, could not find any evidence supporting the allegations made by the complainant.

4 Be that as it may, admittedly, the complainant sworn affidavit on 25th Day of February, 2020 before Superintendent, City Sessions Court, Bombay, Borivali Division. It is taken on record and marked **“X-1” for Identification.** In affidavit, she stated that;

“ The First Informant say that prior to her marriage with Sonu Shaikh, First Informant and present Accused were in relationship, and Accused often used to visit her residence and also used to stay at her residence. But since beginning victim Mousomi dislike Applicant’s visit to her residence.

The First Informant say that after lodging present report, she by taking Victim into confidence, again made inquiry with her about the incident, alleged in the compliant. On which victim disclosed her that since she did not like applicant and his visit to her house, therefore, to keep him away she made said allegation against the Applicant, and she further clarified that no such incident as alleged in the complaint ever taken place.

The Intervener say that since he came to know the truth and about the innocence of Accused Nooralam, First Informant along with Victim came before this Hon’ble Court to put the real facts before this Hon’ble Court, and executed present Affidavit to produce it before this Hon’ble Court.

The Intervener state that since the Accused Nooralam have not committed any offence, the Intervener don’t want to proceed further with the present case. And have no any objection if this Hon’ble Court incline to grant bail to the Accused, in C.R.No.176 OF 2018, registered with Bangur Nagar Police Station.”

. The, underlined port of the affidavit speaks for itself and in fact, absolves the applicant of all the allegations.

5 Though, this affidavit was produced in the bail proceedings before the learned Sessions Judge, yet, it was not correctly appreciated. Nevertheless, I have perused the investigation papers and the affidavit of the complainant. That, while affirming the affidavit, complainant had produced her Aadhar Card. Affidavit bears, an endorsement to that effect. Copy of the Aadhar Card is at Page 241 of this Application. Complainant is present in the Court. She admits Aadhar Card at Page 241 is of her. Aadhar Card, shows, complainant is wife of the applicant-Noor Alam Shaikh. When confronted with this fact, the complainant admitted the contents and particulars in the Aadhar Card are correct. This fact clearly implies, that the contents of the affidavit filed by her in the trial Court, were not false or incorrect. Thus, prima-facie, false involvement of the applicant in the crime in question, by the complainant is much obvious and cannot be ruled out. Even otherwise, applicant has been incarcerated for three years and seven months. Till date, charge has

not been framed. Applicant is permanent resident of Bombay and by imposing appropriate conditions, his presence for the trial can be secured.

6 In consideration of the facts, stated above, applicant in Crime No.176 of 2018 registered with Bangur Nagar Police Station, shall be released on executing PR bond for the sum of Rs.25,000/- with one or more sureties in like sum.

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

8 The application is accordingly allowed and disposed of.

9 It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of bail and

the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)