

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2116 OF 2021

Salma Bint Rafiyaddin Ansari @ Salma Khala ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms. Misbaah Solkar i/b Mr. Amin Solkar for the Applicant.

Ms. Anamika Malhotra, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 4th OCTOBER, 2021

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks her enlargement on bail in connection with C.R. No. I-73 of 2019 registered with the Pawarwadi Police Station, Nashik, for the alleged offences punishable under Sections 376, 376(3), 376(d), 354(a), 354(b), 328 and 506 of the Indian Penal Code and Sections 6, 10 and 12 of the Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that the alleged offences are as against the main co-accused i.e. Wakar Ahamad Jahir Hussain alias Wakar Maulana. She further submits that there is nothing in the entire chargesheet to show that the applicant had knowledge that the said accused had physical relations with the prosecutrix. She submits that the only allegations as against the applicant is, that when the prosecutrix returned one night from the co-accused – Maulana's house, she asked her whether she had fun. She submits that there is nothing to show that the applicant had knowledge that the prosecutrix was molested/sexually abused at the Maulana's house on that day, inasmuch as, the girls used to go and do household chores in Maulana's house.

4. Learned APP opposes the application. She submits that one of the witness staying in the Madarsa has stated that the applicant would assault them and abuse them and that Maulana's wife used to call the applicant and ask her to send the girls from the Madarsa, for doing household work.

5. Perused the papers. The allegations are essentially as against Wakar Maulana, who was in-charge of the Madarsa. The applicant was a care-taker who was looking after the girls and would serve food to the girls.

It is the prosecution case that the Maulana and his wife Ashiya would call the girls to do household work and that on a couple of occasions, accused No.1 – Maulana would inappropriately touch the girls and even sexually assault the girls. As far as the applicant is concerned, the statement at the highest would show that she would assault them and abuse the girls. Prima facie, there is nothing in the statement of the girls to show that the applicant was aware that the Maulana was sexually assaulting the girls. Be that as it may, considering the evidence *qua* the applicant, her further detention is not warranted. She is in custody since 1st July, 2019 and that investigation is complete and chargesheet is filed.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. for a period of 12 months from the date of her release, except if the date in the trial Court falls on a Saturday;

(iii) The applicant shall inform her latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

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

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.