

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

BAIL APPLICATION NO.1010 OF 2020

Saddam Abrar Khan

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....
Mr.Salman Anwar Khan, Advocate for the Applicant.
Mr.Y.M. Nakhwa, APP for the Respondent - State.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 01, 2021.

P.C. :

The applicant is arrested in connection with C.R.No. 598 of 2019, registered with Bhiwandi City Police Station, District-Thane, for offences punishable under Sections 363, 377 and 506 of Indian Penal Code ("IPC", for short) and Sections 4, 6 and 8 of Protection of Children from Sexual Offences Act ("POCSO Act", for short). First Information Report ("FIR", for short), was lodged on 21st December, 2019, and, the applicant was arrested on the same day.

2 The case of the complainant is that the victim boy is her son. On 20th December, 2019, complainant's elder daughter

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This order is corrected pursuant to Speaking to the Minutes order dated 4th March, 2021.

**RajeP.
Aher**

informed her that at about 11:45 p.m., the victim boy had left with accused on motorcycle. Complainant tried to search her son. He returned at about 01:00 a.m. She took him home. The victim boy told her that the accused took him on the mezzanine floor of toilet and did wrongful act with him. The accused also committed wrongful act on rear side. Thereafter, he was taken to Dhobi Talao stadium and accused again repeated the act. He was threatened. The complainant went to the house of the accused, but, he was not available. FIR was lodged. The complainant has summarised her statement by stating that applicant had committed penetrative unnatural act. On 22nd December, 2019, supplementary statement of the complainant was recorded. In the said statement, she stated that on 21st December, 2019, she had stated that the accused had committed unnatural offence. However, it was an attempt. Thereafter, statement of victim boy was recorded on 22nd December, 2019. He stated that the accused have committed wrongful act. He was threatened. He also stated that he was subjected to sexual assault from the date of election. The statement of the victim boy was recorded under Section 164 of Cr.P.C. In the said statement, he stated that the accused attempted penetrative in anus.

3 From the statement of the complainant, statement of

the accused under Section 161 of Cr.P.C. and further statement under Section 164 of Cr.P.C., it is apparent that there is variation in version. In the FIR lodged by mother of the victim, she stated that the accused has committed unnatural offence. Subsequently, she altered her statement and stated that it was only an attempt. The statement of the victim boy also mentions that it was an attempt. The medical certificate is on record which mentions that there was no injury on parianal area. Separate certificate was issued by doctor who had examined the the victim boy. The medical officer had issued letter to the police inspector dated 14th February, 2020, stating that he had examined the victim boy on 21st December, 2019 at 08:30 p.m. at Indira Gandhi Memorial Hospital, Bhiwandi. After examining he stated that there is no parianal or anal injury. The victim was examined immediately after incident. The applicant is in custody for more than a year. The version of the complainant and the victim appears to be debatable. Hence, bail can be granted to the applicant.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1010 of 2020, is allowed;

- (ii) Applicant is directed to be released on bail in connection with C.R.No. 598 of 2019, registered with Bhiwandi City Police Station, District-Thane, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report the concerned police station one in three months on first Saturday of the month, between 11:00 a.m. to 01:00 p.m.;
- (iv) Applicant shall not approach the victim or the complainant and shall not tamper with the evidence;
- (v) Bail Application No.1010 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)