

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2185 OF 2021**

Razik Muneer Ahmed .. Applicant
Versus
State of Maharashtra & Anr. .. Respondents

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Mr.Rahul Kadu i/b S. Kadu Law House LLP for the Applicant.

Mr.A.R.Kapadnis, APP for the State.

PSI Chaitali B. Gapat attached to Kondhwa Police Station present.

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**CORAM: BHARATI DANGRE, J.
DATED : 4th AUGUST, 2021**

P.C:-

1. The applicant is charged with the offences punishable under Sections 354, 354A, 354B read with Section 34 of the IPC and Sections 8 and 12 of the POCSO Act in an FIR vide No.971 of 2020 registered with Kondhwa Police Station, District Pune.

2. The complainant is the mother of the victim girl, aged 16 years, who was sent for a stay with her aunt (accused No.1) and the incident took place during her stay was reported to the complainant.

The victim girl informed her mother about the strange approach of her aunt when she used to fondle her breast and

used to indulge in obscene talks with her boyfriend in her presence, accused No.2 (the present applicant). It is alleged that the victim's aunt used to boast about the advantages of being in flesh trade, but the victim resisted and told her that she was interested in persuading her education.

3. An incident has been narrated by the victim when the aunt took the victim in her bedroom and after bolting the door, she indulged in foreplay with the applicant by saying that they will demonstrate how the act is to be performed. The victim girl alleged that accused Nos.1 and 2 removed all their clothes and were naked. Thereafter, accused No.1 removed her top and instigated accused No.2 to indulge in sex with the victim girl. However, she somehow freed herself and ran out of the room.

The statement of the victim girl came to be recorded during the course of investigation and she confirmed the allegations in the complaint.

4. In the wake of the allegations, the applicant came to be arrested on 07/08/2020 and since then he remain incarcerated. The crime invokes Sections 354, 353A, 354 B read with Section 34 of the IPC and Section 8 and 12 of the POCSO Act. On perusal of the accusations levelled against the present applicant, *prima facie*, Section 354 is attracted since the act of removing her top and forcing her to indulge in sexual act is with an intention to outrage her modesty. However, Section 354A which makes an act of sexual harassment

punishable contemplate a man committing any of the following act :-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

The victim does not allege that it is the applicant who committed any of the act contemplated in clauses (i), (ii) and (iv), but whether the applicant indulging in an inappropriate manner with accused No.1 would fall within the purview 'Pornography', which is a portrayal of sexual subject matter for the exclusive purpose of sexual arousal in form of books, magazine, photographs, sculpture, painting, animation, video film etc. Whether the act of the accused persons would fall within the purview of 'Pornography' is a matter of trial since 'Pornography' have depiction of erotic behaviour (as in books or writings) intended to cause sexual excitement or material (such as books or photographs) that depict erotic behaviour and is intended to cause sexual excitement. As far as Section 354-B is concerned, there is no allegation that the applicant used criminal force to disrobe the victim. Further, Section 8 of the POCSO Act has been invoked which punish an act of sexual assault, which is defined in Section 7 which involve physical contact without penetration. Further, Section 12 which prescribes punishment for sexual harassment, which is

defined in Section 11, would contemplate showing any object to a child in any form or media for pornographic purpose and ultimately everything will turn out on what would amount to 'pornography'.

5. The allegations levelled by the victim girl are undisputedly serious in nature and the accused persons have attempted to take benefit of innocence of the victim girl and they attempted to rope her in the act in which they were indulging, but fortunately the girl has escaped untouched. The act attributed to the accused persons would fall within the ambit of immoral act, specially when there two adults have entangled a minor girl. However, the charge levelled against the applicant will have to be conclusively established at the time of trial.

Section 354 prescribe punishment not less than year but which may extend to five years and Section 354-A would also entail punishment which may extend to three years on satisfying the ingredients 354-A(1)(iii) and offence under Section 12 is punishable with imprisonment, which may extend to three years. The applicant is arrested since 07/08/2021 and it is nearly a year when he remain incarcerated. Taking into consideration the maximum punishment, which he will undergo on conviction of the offence with which he is charged, in my considered opinion, he cannot be incarcerated anymore, awaiting his trial. If convicted, he will undergo his sentence. Hence, the following order.

: ORDER :

- (a) The application is allowed.
- (b) Applicant - Razik Muneer Ahmed shall be released on bail in C.R.No.971 of 2020 registered with Kondhwa Police Station, Pune on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall not establish any contact with the victim girl and the prosecution is at liberty to apply for cancellation of bail, if the family of the victim girl or the victim girl report about any influence at the instance of the applicant.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.
- (e) The applicant shall mark his attendance in the Sessions Court once in every month.

[SMT. BHARATI DANGRE, J.]