

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2247 OF 2021

MISS ZEENAT HANIF SHAIKH)...APPLICANT

V/s.

**1) THE STATE OF MAHARASHTRA)
2) MRS.TABASUM RIYAZ SHAIKH)...RESPONDENTS**

Mr.Piyush Toshnival i/b. Mr.Vivek Arote, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Mr.Ravindra Pachundkar, Advocate for Respondent No.2 - Original Complainant

CORAM : V. G. BISHT, J.

**RESERVED ON : 26th OCTOBER 2021
PRONOUNCED ON : 15th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.971 of 2020 registered with Police Station Kondhawa,

for offences punishable under Section 354, 354(A), 354(B) read with 34 of the Indian Penal Code (IPC) and Section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 Informant is mother of victim girl aged 16 years. The victim and her siblings were sent to applicant for vacation, who happens to be their real aunt. At the relevant time, the applicant was residing with her boyfriend namely Muneer Ahmed (accused) and was to marry him.

3 According to the prosecution when the victim and others were taken back by the informant to her house, she noticed that the victim was always tense and used to cry all of a sudden. After much coaxing, on 5th August 2020 the victim informed her mother about the behaviour of her aunt. She narrated that the applicant used to fondle her breasts and used to indulge in obscene talks with her boyfriend i.e. accused Muneer Ahmed in her presence. She further complained that the

applicant used to tell her about advantages of being in flesh trade but she (victim) resisted and made herself clear that she is more interested in pursuing her education.

4 Narrating the incident which took place in the month of April, the victim informed her mother (informant) that at about 2.00 a.m. in the night she was taken by the applicant in her bedroom and after bolting the door she indulged in foreplay with the accused Muneer Ahmed by saying that they will demonstrate how the act is to be performed. The victim further informed her mother that the present applicant and the said accused removed all their clothes and were naked. Thereafter, the applicant removed her top and instigated accused Muneer Ahmed to indulge in sex with her. However, somehow, she rescued herself and ran out of the room. First Information Report (FIR) accordingly came to be registered.

5 Mr.Piyush Toshnival, learned counsel for the applicant, submits that the informant and the present applicant

are real sisters. Other accused has already been enlarged on bail by this Court on 4th August 2021. Having regard to the facts and circumstances of the case, the custodial interrogation of the applicant is not necessary. The applicant is ready to abide by any terms and conditions which may be imposed by this Court and therefore, he be released on bail.

6 Mr.Dedhia, learned APP, on the other hand, opposed the submissions and invited my attention to the statement of the victim. The learned counsel for respondent no.2 makes a submission that the informant is now supporting the applicant and this fact has been informed telephonically to him.

7 Certain contingencies are contemplated in order to attract the applicability of Section 354A of IPC. The said Section deals in sexual harassment and punishment for sexual harassment. It provides that a man committing any of the following acts - (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 would amount to sexual harassment of the victim. As far as clauses (i), (ii) and (iv) are concerned, apparently these clauses are not attracted, having regard to the case of the prosecution. As far as clause (iii) is concerned, whether that would fall within the purview of pornography will have to be assessed and ascertained at the time of the trial.

8 The accusations made in the FIR undoubtedly are of a very serious nature. However, it will require evidence to establish those accusations. Moreover, the alleged offences do not entail either life imprisonment or death. I am also conscious of the fact that other accused namely Razik Muneer Ahmed has already been released on bail by this Court. The position of both the accused is more or less same. In the circumstances, I do not find any reason not to allow the application. Hence, the following order :

ORDER

- (i) Applicant – Miss Zeenat Hanif Shaikh shall be released on bail in Crime No.971 of 2020 registered with Police Station Kondhawa, on her executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (ii) 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.

- (iii) 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.

(iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(v) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)