

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

CRIMINAL BAIL APPLICATION NO.1138 OF 2020

Ashraf Azgar Sayyed	 Applicant
Versus	
The State of Maharashtra	 Respondent

Ms. Anjali Patil, Advocate for the Applicant.
Mr. S. H. Yadav, APP for the State/Respondent.
PSI Ganesh Phad, Dindoshi Police Station, is present.

CORAM :SARANG V. KOTWAL, J.

DATE : 05th JANUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.588/2020 registered at Dindoshi police station, Mumbai on 12.8.2020 under Sections 354, 354-A & 506 of the Indian Penal Code and under Sections 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). The Applicant is arrested on 2.9.2020 and since then he is in custody. The investigation is over and the

charge-sheet is already filed.

2. Heard Mrs. Anjali Patil, learned Counsel for the Applicant and Mr. S.H. Yadav, learned APP for the State.

3. The FIR is lodged by the mother of two victims. The informant is the Applicant's wife. It was her second marriage. The informant had four daughters from her earlier marriage. In 2016, she got married with the present Applicant and they have a daughter and a son from this marriage. It is alleged in the FIR that the Applicant was addicted to drugs and at the time of lodging of FIR, the informant and the Applicant were residing separately. It is alleged that on 30.5.2020, the Applicant came to the informant's house. He was under influence of some drug. On the next day morning, the informant saw that he was sleeping near her daughter aged 16 years. She asked her daughter about it. At that time, her daughter told her that the Applicant had tried to remove her clothes. He touched that victim girl on her stomach, legs and chest. The FIR mentions that similar incident was repeated on 26.6.2020; this time, in respect of another daughter aged 13

years of the informant. Similar allegations were made by this victim as well. On this basis, the FIR is lodged.

4. Learned Counsel for the Applicant invited my attention to an N.C. lodged by the Applicant himself on 27.6.2020. In that N.C. complaint, he had made allegations before the police that the informant had met him in Gokuldham Market. The informant had abused him and had pushed him. She submitted that the Police had called the first informant in this case in connection with the N.C. lodged by the Applicant. But, at that time, no allegations were made by her about her daughters having been ill-treated, as mentioned in the FIR.

5. Mrs. Patil invited my attention to a complaint dated 7.7.2020 made by the informant in this case against the Applicant about stealing of her golden articles. At that time there was a passing reference that the Applicant had tried to outrage the modesty of her 17 years old daughter. She submitted that even at that stage also no such serious allegations, as made in the FIR, were made by the first

informant.

6. Learned Counsel for the Applicant also invited my attention to a copy of Deed of Divorce by Khulanama. It was signed by the first informant and it was sent to the Applicant. The Khulanama was dated 21.6.2020. The Applicant had refused to sign it. She, therefore, submitted that because of all these strained relations between the couple, this motivated FIR was lodged against the present Applicant by using informant's daughters.

7. She submitted that the victims were the step daughters of the Applicant and, therefore, they were never on good terms. They were simply supporting their mother in the fight against the present Applicant. She submitted that the allegations are not true and, therefore, bail should be granted.

8. Learned Counsel for the Applicant submitted that the punishment which can be awarded in this case is not less than three years, but, it may extend to five years. There are no allegations of either penetrative or aggravated sexual assault.

9. Learned A.P.P., on the other hand, relied on the statements of the victims, who have supported the allegations in the FIR. Their statements are similar to the allegations made in the FIR. Learned A.P.P. submitted that the offence is serious and, therefore, bail should not be granted to the Applicant.

10. I have considered all these allegations. As rightly pointed out by learned Counsel for the Applicant, there is a history of bad relations between the first informant and the Applicant. It is important to consider the complaint given by the first informant on 7.7.2020 to the Police in respect of theft committed by the present Applicant. In that complaint, there is just a passing reference to an attempt to outrage the modesty of one of the victims. There is no reference to the serious allegations as made in the FIR.

11. The first informant apparently was asked about the N.C. lodged by the Applicant and no allegations which are made in this case were put forth by her before the police at that stage.

12. The Deed of Divorce, which is not signed by the Applicant is also an important document, which shows that the informant was putting pressure on the Applicant to agree for divorce.

13. The alleged incidents had taken place on 30.5.2020 and 26.6.2020. The Applicant had given his N.C. on 27.6.2020. The informant had given her complaint on 7.7.2020 and yet F.I.R. with serious allegations is lodged on 12.8.2020. This appears to be an afterthought to implicate the Applicant in this case.

14. Considering this strained relationship between the Applicant and the informant, there is a possibility of false implication in this particular case. In any case, the maximum punishment which can be awarded in this case is five years under Section 8 of the POCSO Act. The investigation is already over. The Applicant is in custody since 2.9.2020. Therefore, I am inclined to grant bail to the present Applicant on certain conditions.

15. Hence, the following order :

ORDER

- (i) In connection with C.R.No.588/2020 registered at Dindoshi police station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall not try to contact the informant or the victims.
- (iii) Criminal Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)