

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

BHALCHANDRA
GOPAL
DUSANE

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Date: 2021.11.01
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BAIL APPLICATION NO.1904 OF 2019

Sohel Yakub Shaikh Applicant

Vs.

The State of Maharashtra Respondent

Mr. Veerdhaval Deshmukh, appointed Advocate for Applicant.
Ms. Prajakta P.Shinde, APP for State.
API Sheetal Chougule, Kasarwadavali Police Station

Coram : NITIN W. SAMBRE, J.
Date : 30TH OCTOBER, 2021

P.C.:

1. The applicant is seeking regular bail Crime No. 245 of 2018, registered with Kasarwadavali Police Station, for an offence punishable under Sections 376, 506 of Indian Penal Code and 3, 4 and 12 of POCSO Act.
2. The prosecution case against the applicant is, the applicant being neighbour subjected the victim to sexual assault.

3. Having perused the statement of the victim so also of her mother recorded under Section 161 of Cr.P.C. so also statement of the victim under Section 164 of Cr.P.C., it is apparent that the mother of victim has signed the statement in a language other than English, Hindi and Marathi.

4. The statement under Section 164 of Cr.P.C. is recorded in Marathi, however, it appears that the victim's mother was not aware about the local language i.e. Hindi and Marathi and as such contents thereof explained to her by the learned Magistrate in Hindi. The said approach on the part of the Magistrate is contrary to legal scheme of Section 164-A of the Code of Criminal Procedure.

5. As such, it is apparent whether there was any confirmation as to what has been duly understood by the victim or her mother in context to the contents of said statement.

6. Apart from above, there is delay of four days in lodging F.I.R. In fact the statement of the witnesses supports the case of the

applicant that the applicant was confronted publicly by the mother of victim. The medical evidence supports only about the offence under Section 8 or 12 of POCSO Act, for which punishment is provided for five years.

7. That being so, a case for grant of bail is made out. The application is allowed on following conditions :

ORDER

(i) The applicant be released on bail in Crime No. 245 of 2018, registered with Kasarwadavali Police Station, for an offence punishable under Sections 376, 506 of Indian Penal Code and 3, 4 and 12 of POCSO Act, on furnishing P.R. bond in the sum of 25,000/- with one or more local sureties in the like amount.

(ii) The applicant shall neither influence the prosecution witnesses in any manner nor tamper with the evidence.

(iii) The applicant shall not directly or indirectly contact the victim or her family members till conclusion of trial.

- iv) The applicant shall remain outside jurisdiction of the concerned Police Station till trial is concluded.
- v) Within two weeks of release, the applicant shall furnish his contact details to the I.O. of the concerned Police Station.
- vi) Copy of this order be sent to Legal Aids Committee, High Court, Bombay.
- vii) Admissible professional fees be paid to the Appointed Advocate, Mr. Veerdhaval Deshmukh.
- viii) The applicant shall mark his attendance in first week of every English calendar month to the I.O. of the concerned Police Station, till conclusion of trial.

(NITIN W. SAMBRE, J.)