

Anand

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

BAIL APPLICATION NO. 2410 OF 2019

**Nisha S.
Chitnis**

Shekhavat Altaf Hussain

.Applicant

Vs.

Digitally signed
by Nisha S.
Chitnis
Date: 2021.01.28
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The State of Maharashtra

.Respondent

Mr. Rohan P. Surve, Advocate, for the Applicant

Mrs. S. V. Sonawane, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 21.01.2021

P. C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 535 of 2018 registered with the Vashi Police Station, Navi Mumbai, for the alleged offences punishable under Section 377 of the Indian Penal Code and under Sections 4 & 8 of the Protection of Children from Sexual Offences Act (for short ‘POCSO’).

3. Perused the papers. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case, as a counterblast to the complaint / FIR lodged by the Applicant as against the two victims in the present case for the alleged offences

punishable under Section 326 r/w 34 of the Indian Penal Code, i. e. C. R. No. 330 of 2018 registered with the Vashi Police Station. He submits that the Applicant had lodged the said FIR on 10.08.2018 with respect to the incident of 09.08.2018. Learned counsel for the Applicant submits that pursuant thereto, two of the victims in the present case were arrested. It appears that on 14.08.2018, after one of the victim boy was released on bail, he reported the commission of an offence by the Applicant under Section 377 of the Indian Penal Code to his mother. Pursuant thereto, on 05.12.2018, an FIR was registered as against the Applicant for the aforesaid offences. Pursuant to the registration of the aforesaid FIR, the Applicant was arrested on 19.12.2018. According to the statement of one of the victim boys, the incident took place on 09.08.2018. It is alleged by the prosecution, that the Applicant had called all the three victim boys to his house on 09.08.2018. It is further alleged that prior thereto, i. e. on 07.08.2018, the Applicant had sent certain objectionable audio clips on whatsapp to one of the victim boys. According to the victim boys, when they reached the Applicant's house, the Applicant switched off the lights in the hall and called one victim boy inside and molested him, whilst other two victim boys were sitting in the hall. After the victim boy came outside the kitchen, the Applicant called the other victim boy inside the kitchen and molested him. When

the last victim boy went in the kitchen, there was a scuffle, pursuant to which the other two victim boys entered the kitchen and saw that the Applicant had held the victim boy and they both were fighting with each other. It is alleged that in the altercation that took place, one of the victim boys picked up the dumb-bells which was kept in the kitchen room and assaulted the Applicant with the same. All the victim boys are aged between 16 and 17 years. All the three victim boys were medically examined. The medical examination does not prima facie show any injury on the victim boys with respect to sexual assault. Be that as it may, the same is a matter which will be decided by the trial Court. There are cases lodged by both sides against each other with respect to the incident dated 09.08.2018. The Applicant is in custody since 19.12.2018. Investigation is complete and charge-sheet is filed. The Applicant has no antecedents.

4. Having regard to the aforesaid, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

(i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 25,000/-** with one or two local sureties in the like

amount;

(ii) The Applicant shall attend the concerned Police Station on the **first Sunday of every month** between **10:00 a. m. and 12:00 noon** till the conclusion of the trial;

(iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The Applicant shall not enter the vicinity or locality, where the victim boys are residing;

(vi) The Applicant to co-operate with the conduct of the trial and attend the trial Court on all the dates, unless exempted;

(vii) The Applicant shall file an undertaking with regard to clauses (ii) to (vi), in the Registry of the trial Court, within two weeks of his release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's

bail.

5. The Application is allowed in the aforesaid terms and is accordingly disposed of.

6. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order digitally signed by Personal Assistant / Private Secretary.

(REVATI MOHITE DERE, J.)