

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

BAIL APPLICATION NO. 3339 OF 2019

Nihal Ahmed Abdul Majid Ansari ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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Mr. Swaraj Jadhav i/by Mr. Vijay Kumar R. Garad, Advocate for the Applicant.

Mr. Sushan Mhatre, Advocate for the Complainant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. D. B. Kadu (P. S. I.), Shivaji Nagar Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th AUGUST, 2021.

PER COURT:

1. This is an application for bail in C.R. No. 225 of 2019 investigated by Shivaji Nagar Police Station for offences under Sections 354, 354(B), 354(D), 376(2), 328 of Indian Penal Code (for short “IPC”) and Sections 6, 8, 10, 12 & 14 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). The applicant was arrested on 29th April, 2019.

2. The case of the prosecution is that the complainant is principal of school and junior college, where the victim was

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studying. On 13th April, 2019, the accused visited the said institute and requested for school leaving certificate of the victim girl, who was student of 11th standard. The school teacher was suspicious about his visit and made inquiry with him. The father of victim girl was called to the school. He stated that the accused is not related to him and he was not authorized to collect school leaving certificate. The accused stated that he has been called by the victim girl to the school and he had not visited the institute for collecting school leaving certificate. The accused is school teacher in a municipal school. The victim denied that she had called the accused for collecting the school leaving certificate. The accused left the school premises. Thereafter, the school teachers repeatedly inquired with the victim girl, whether the accused is causing any harassment to her. The victim girl then disclosed to the complainant that, in – 2014 the accused had molested her. Again in 2015 similar acts were performed. Indecent video was shown to her. In - 2018 the accused again approached her. She was subjected to penetrative sexual assault. She was abused and threatened. About three months ago prior to lodging of complaint she was given something to drink. Her clothes were removed and again she was subjected to sexual assault. The First Information Report (for short 'FIR') was registered initially with Deonar Police Station as

C.R. No. 00 of 2019 and the same was transferred to Shivaji Nagar Police Station. The statement of the victim girl was recorded under Section 161 of Cr.P.C. wherein she has narrated the incident of sexual assault and sexual harassment. The statement of the victim was also recorded under Section 164 of Cr.P.C. On completing investigation, charge-sheet was filed.

3. The applicant had preferred an application for bail before the Special Court under the POCSO Act. The said application was rejected vide order dated 7th November, 2019.

4. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. Many students were leaving the school and since the victim was intending to leave the school by obtaining school leaving certificate. To stop the students from leaving the school, the applicant has been falsely implicated by the teachers from the school. The victim had called the applicant and since he was confronted by the school teacher and the father of victim. The alleged incidents had occurred in the year 2014 & 2015. For a period of about 5 year, the victim did not disclose the alleged incidents to any person. There is inordinate delay in lodging the FIR. Even after alleged last incident, there is delay in lodging complaint. There is no evidence to substantiate the

allegations that the victim was subjected to consumption of any drinks or stupefying substance. No videos as alleged were recovered during the course of investigation. The statement of witness Shahina Khan would indicate that the victim and the accused had jointly requested for school leaving certificate and they were together which runs counter to the allegations in the FIR. The medical evidence does not support the prosecution case. There is improvement in the statement recorded under Section 164 of Cr.PC.

5. Learned APP submitted that the applicant is a school teacher. He is aged about 56 years at the time of lodging FIR. The age of the victim around 16 years. She was minor. She was continuously subjected to sexual assault. There is no reason for the victim girl to lodge the FIR against the applicant. The narration of the events in the FIR and statements of the victim girl inspires confidence and shows that there is truth in the said statements. This is not the stage to discard the statements of the victim. She has been subjected to sexual assault since 2014. On account of the threats by the accused, the victim did not disclose the incidents to any person. It is only after the school teacher took the victim in confidence and asked her about the harassment, if any caused by

the applicant. She disclosed the incidents to the teacher and principal of the institution, who has lodged the FIR. Both statements under Sections 161 & 164 of Cr.P.C. attributes overt act to the applicant.

6. Learned counsel for the victim submitted that he has taken instructions in the matter from victim. He submitted that the victim comes from poor family. She was minor at the time of incident. There is no reason for the victim or school teacher to lodge the false case against the applicant. The medical evidence supports the case of the prosecution. Application for bail may be rejected.

7. On 16th June, 2021, when the application was heard on V.C. (Video Conferencing), the victim and her mother were present with Advocate. This Court in order dated 16th June, 2021 recorded that victim has expressed that she is not desirous of persuading the matter and she has no objection if applicant is released on bail. Taking the statement from a young and immatured girl, the learned Judge deemed it expedient to speak with mother of victim girl. The mother averred that the case is not true and her daughter has not reported about such harassment faced by her at the instance of applicant. The Court observed that,

the complainant is not the victim girl or her mother, but the head of the school. In order to ascertain the veracity of the statement of the victim girl, and her mother, it would be necessary to have them present physically in Court along with the complainant. It was directed that, complainant, victim girl along with her parents or either of the parent should physically remain present in Court if the prevailing restrictions on account of Covid-19 are relaxed. On 7th July, 2021, the complainant was physically present in the Court. She had instructed learned APP to submit that, she has lodged the complaint and she would stick to the contents of her complaint. The victim girl and her parents were absent. On 16th July, 2021 the victim and her father were physically present before this Court. They requested that, legal aid may be provided to them to represent them before this Court. This fact was recorded in order dated 16th July, 2021 and directions were issued to appoint Advocate to represent victim. In pursuance to that learned Advocate Sushan Mhatre was appointed to represent victim. I have perused the FIR, statements of the victim and the documents which forms the part of charge-sheet. The FIR was lodged by the principal of the Higher Secondary School, where the victim was studying. On 27th April, 2019, the accused had allegedly visited the institution for collecting the school leaving certificate of the victim. He was

confronted by the school teacher and subsequently, the father of the victim girl was called, who denied any relationship with the applicant. The victim has stated that she was subjected to molestation, sexual assault and sexual harassment from 2014 onwards. The narration reflected in the FIR, the statements under Sections 161 and 164 of Cr.P.C. of the victim girl refers to the events of sexual assault and sexual harassment. It is pertinent to note that in the year 2014, the victim could be hardly aged around 12 years. The age of the applicant is around 56 years at the time of lodging FIR. The age of the victim was about 16 years when the complaint was registered. The medical evidence also supports the prosecution case. The history provided by the victim girl refers to the overt act attributed to the applicant. The victim was examined and the observations made by the medical officer which are reflected in the examination report indicate that overall finding is consistent with old sexual intercourse/assault. The other observation reflected in the medical report are corroborative to the version of the victim. It is true that the victim was subjected to sexual assault from 2014. However, the circumstances in the present case are required to be considered. The victim was small girl at the time of incident. She was allegedly continuously sexually assaulted by applicant. The discrepancies as contended by the

learned counsel for the applicant cannot be appreciated at this stage. Hence, no case for grant of bail is made out.

ORDER

Bail Application No. 3339 of 2019 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)