

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1096 OF 2022

Shaikh Fazal Shaikh Ashfaq

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.B.S.Deshmukh, Advocate for applicant

Mr.R.B.Bagul, APP for respondent

Ms.Mayur Shriram Hange, APP for respondent no.2

CORAM : R.G. AVACHAT, J.

DATE : SEPTEMBER 28, 2022

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0056 of 2022 registered with Varangaon Police Station, Dist.Jalgaon, for the offences punishable under Section 377 of Indian Penal Code and Sections 4 and 8 of Protection of Children from Sexual Offences Act.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (FIR) has been lodged by the father of the victim, a six years old child. The gist of the prosecution

case is that the applicant took the victim boy to his residence with a promise to give him a new ball. He even paid him Rs.20/-. He took the child in bathroom. As per the allegations in the FIR, applicant attempted to insert his private part in the anus of the victim.

4. Learned APP strongly relies the explanation offered in the FIR for delayed registration of the crime. He also relies the medical examination report of the victim to show the signs of inflammation present. He, therefore, urged for rejection of the application.

Learned counsel appointed to represent the victim would submit that the uncle of the applicant had threatened the informant to take back the allegations. A crime has, therefore, been registered against him.

Learned APP and learned counsel representing the victim, therefore, urged for rejection of the application.

5. The alleged incident occurred on 03.04.2022 at 12.00 noon. The FIR has been lodged seven days thereafter. From the allegations in the FIR, it is not clear as to whether it was a complete act or an attempt to commit the same. The medical examination report does not suggest penetration. The statement of the victim recorded under Section 164 of the Code of Criminal Procedure

reinforces the allegations. It is not that a false FIR has been lodged. From the facts and circumstances of the case, what can be observed is that the incident might have taken place. The applicant is in jail for over five months. On investigation, charge sheet has been filed. It will take time for commencement and conclusion of the trial. In view of the above, the Court is inclined to grant the applicant bail.

6. The observations made herein above are for grant of bail to the applicant. The trial Court shall not be influenced thereby.

7. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.0056 of 2022 registered with Varangaon Police Station, Dist.Jalgaon, for the offences punishable under Section 377 of Indian Penal Code and Sections 4 and 8 of Protection of Children from Sexual Offences Act, on executing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence.

(iv) The applicant shall not enter Varangaon, Tq. Bhusawal, Dist.Jalgaon, until conclusion of trial.

(v) Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.6,000/- (Rupees Six Thousand).

[R.G. AVACHAT, J.]

KBP