

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2864 OF 2021**

Dashrath Mahadev Shelake	...	Applicant
versus		
The State of Maharashtra & Anr.	...	Respondents

Ms. Vilasini Balsubramaniam i/by Mr. Jaydeep D. Mane, for Applicant.
Mr. Y.Y.Dabake, APP, for State.
Ms. Ameeta Kuttikrishnan, appointed Advocate for Respondent No.2.

CORAM: N.J.JAMADAR, J.

DATE : 6th JULY, 2022

P.C.

1. The Applicant who is arraigned in C.R.No.59 of 2021 for the offences punishable under Sections 376, 376(j), 376AB, 354AB and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POSCO Act), has preferred this Application to enlarge him on bail.

2. The Respondent No.2 - first informant is the resident of Haralwadi, Tal. Mohol. He has a three and half year old daughter. The Applicant is his neighbour. On 16th March, 2021 the first informant had gone to the nearby field. At about 3.00 p.m., while his wife was passing from in front of the house of the Applicant, she raised a loud cry that the Applicant was performing dirty act with their daughter. The first informant and his wife rushed to the house of the Applicant. The victim was made to lie on bed in a naked state. The Applicant had no shirt on his body. When confronted,

the Applicant went away from his house. The victim informed the first informant and his wife that the Applicant removed her clothes and touched her stomach, chest and private parts. The first informant thus lodged a report.

3. The Applicant came to be apprehended. The medico legal examination of the victim was conducted. Post completion of investigation, charge sheet has been lodged. The Medical Officer opined that the evidence of sexual intercourse / assault cannot be ruled out. It was, however, noted that there was no evidence of injuries to the private parts of the victim.

4. The learned Counsel for the Applicant submitted that the Applicant has been falsely implicated. There is no corroboration to the claim of the victim who was barely three and half years of age. Having regard to the advanced age of the Applicant, the Applicant be released on bail, urged the learned Advocate for the Applicant.

5. The learned APP and the learned Advocate appointed to espouse the cause of the Respondent No.2 resisted the prayer for bail. It was submitted that there is overwhelming material to prima facie make out the offences for which the Applicant has been arraigned.

6. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. The statement of the mother of the victim indicates the circumstances in which the Applicant was allegedly found subjecting the victim to exploitation. The mother of the victim stated that while she

was passing from in front of the house of the Applicant, she noticed that the victim was lying on the bed in a naked state. The Applicant was also lying besides her in a naked state. She raised alarm and called her husband, who was in the adjacent field. She and her husband rushed to the house of the Applicant. He was confronted. Her husband assaulted the Applicant by means of stick and the Applicant fled away. Upon being inquired, the victim narrated as to how the Applicant exploited her.

7. It further appears that even the statement of the victim was recorded in the presence of her mother and the medical officer. The victim, it is recorded, gave statement by making gesticulation and in a stammered manner. The victim, it appears, stated that the Applicant disrobed her and also undressed himself. The Applicant lay besides her and touched her chest and private parts. Her mother and father came thereat. Her father beat the Applicant by means of stick.

8. The learned Advocate for the Applicant in the face of the aforesaid material, attempted to wriggle out of the situation by asserting that the medical evidence does not lend support to the claim of the victim, mother of the victim and the first informant. I find it rather difficult to accede to this submission. In the history noted by the Medical Officer, the aforesaid narration finds mention. Undoubtedly, having regard to the age of the victim, the history seems to have narrated by her parents, besides the victim.

9. At this juncture, it is imperative to note that the Applicant was virtually

found in the act of exploiting the victim. The mother of the victim saw the Applicant in the act, raised alarm and called her husband. To this extent, at this stage, there is a requisite support to the prosecution version. The question as to whether there was aggravated sexual assault, is a matter for trial. However, I find it difficult to draw an inference that no prima facie case is made out against the Applicant.

10. As the Applicant is stated to be the neighbour of the victim, it would not be expedient to exercise the discretion in favour of the Applicant. In the context of the age of the victim, the allegations against the Applicant appear to be grave. Nonetheless, having regard to the age of the Applicant, I deem it in the fitness of things to request the learned Special Judge to expeditiously conclude the trial in Special Case (POSCO) No.136 of 2021 arising out of C.R.No.59 of 2021 registered with Kamati Police Station. Hence, the following order :

ORDER

- (i) The Application stands rejected.
- (ii) The learned Special Judge, seized with the Special Case (POSCO) No.136 of 2021, arising out of C.R.No.59 of 2021 registered with Kamati Police Station, is requested to conclude the trial in the said Special Case as expeditiously as possible.

(N.J.JAMADAR, J.)