

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.282 OF 2022

Arun Dagadu Mhaske	]	..	Applicant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr. Shyamrishi Pathak, for the Applicant.

Mr. S.V. Gavand, APP for the State.

Ms. Megha Bajoria, for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 7th SEPTEMBER, 2022.

P.C.

1] It is informed that Advocate on record Mr. Akshay Kapadia has accorded his no objection to another counsel and therefore his name shall be removed from the board.

The Registry shall take note the above development and take necessary steps.

2] The Applicant is charge-sheeted in CR No.509/2021 registered with Kanjurmarg Police Station on 17.09.2021. The subject CR invoke Sections 354A, 114 of the Indian Penal Code and Sections 4,8,12,16 and 17 of the POCSO Act.

3] In the subject CR, two persons are arraigned as accused and

the Applicant is arraigned as accused No.2. He is charged for committing the offence under Section 114 of the Indian Penal Code and Section 16 and 17 of the POCSO Act.

4] The prosecution case is that, the victim girl aged 11 years is residing in the society and on account of lock-down when the schools were shut, she alongwith other children in the society used to play in the precincts (basement). She allege, that one day in August 2021 while she was playing with her friends, accused No.1 who was working as watchman called her and took her mobile number. Since she was knowing him as watchman working in the society, she gave him her mobile number.

She further added that on 15.08.2021, she was called by accused No.1, behind a car which was parked in the basement and he pulled her close to him, kissed her and also pressed her chest and touched her body inappropriately. Since she was scared, she did not disclose the incident either to her friends or parents. Again after 2-3 days, same incident was repeated and she was threatened by Accused No.1 that she should not disclose the incident to any one, else she will be made to suffer consequences.

After few days, it is alleged that Accused No.1 again called her and when she abided by his directions since she was threatened, he inappropriately exhibited his private organ. This scared her and she informed about the incident to her parents.

The FIR came to be lodged on the very same day and accused No.1 came to be arrested.

5] As far as present Applicant who is arraigned as Accused No.2 is concerned, who came to be apprehended on 05.11.2021, he is working

as liftman in the same society. His involvement, according to the prosecution, has surfaced through the supplementary statement of the victim girl, recorded on 21.09.2021.

In her supplementary statement, the girl has indicted the Applicant by stating that while she was playing alongwith her friends, the Applicant i.e. liftman of the building told her to go upstairs as Anil (Accused No.1) is there. The victim girl, however, stated that she did not follow the said directions and left the place.

She reiterated her earlier version in her supplementary statement of accusing Anil of inappropriately touching her and outraging her modesty.

6] Another statement of the victim girl recorded on 29.10.2021 is also relevant, as she state that one day when Anil i.e. Accused No.1 was standing in the washroom, she was called there by him and suddenly the Applicant arrived at the spot and he saw her coming out of the washroom. He scolded her by asking what she is doing there and some quibble ensued between him and accused No.1.

7] Applicant faces accusation under Section 16 and 17 of the POCSO Act. Section 17 prescribe punishment for abetment of any offence under the Act and Section 16 defines what would amount to 'Abetment'.

In terms of the aforesaid provision, a person is said to have abetted an offence, if he has either instigated any person to do that offence or engaged with one or more person or persons in any conspiracy for the doing of that offence, or he intentionally aids, by any act or illegal omission, the doing of that offence.

The three explanations appended to Section 16 of the Act, clearly

require something more than what act is attributed to the Applicant and in terms of the explanation, a particular act is said to instigate the doing of that thing or aiding, doing of that act, in the peculiar situation which would fall within the purview of three explanations.

8] The prosecution accuses the Applicant of not reporting of the incident, despite knowing about the same. But in that case, his action would attract Section 21 of the POCSO Act which prescribe punishment to be imposed upon a person who fails to report the commission of offence under sub-section(1) of Section 19 or 20 and in such situation, when the Applicant has been merely charged under Section 16 of the POCSO Act, alleging abetment of the offence committed by Accused No.1, from the material compiled in the charge-sheet, prima-facie no case is made out under Section 16 of the POCSO Act, as the act of the Applicant, as per the victim girl, would not amount to instigating the doing of the act complained of by Accused No.1 or intentionally aiding the commission of the offence alleged to have been committed by him. In the supplementary statement of the victim girl, she has stated that present Applicant asked her to go upstairs, but she did not follow the instructions and ran away. This is the only role attributed by the victim to the present Applicant.

9] The Applicant remain incarcerated since 05.11.2021 and in any case on the prosecution being able to establish charge under Section 16 of the POCSO Act, he shall take consequences and suffer the penalty under Section 17 of the POCSO Act, which is a special enactment to protect sexual harassment and sexual assault on children.

Offence levelled against accused No.1 being serious, it would

take the legal course in subject trial by the Special Judge, however, it appears that since the investigation is complete and role attributed to the Applicant has clearly surfaced on record, he deserves his release on bail.

10] The learned counsel for the complainant made a serious grievance, that though the Applicant is behind bars his wife who is working as maid servant in the building is threatening the victim girl and her mother in order to retract from the complaint and this must be taken care of while releasing the Applicant on bail.

11] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

12] I must place on record my appreciation to Ms.Bajoria who has assisted the Court and represented the case of the complainant before this Court. High Court Legal Services Committee is directed to make payment of her legal remuneration within a period of four weeks from today.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant Arun Dagadu Mhaske shall be released on bail in connection with C.R.No. 509/2021 registered at Kanjurmarg Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) The applicant shall report to the concerned Police Station on first Monday of every trimester between 10.00 a.m. to 12.00 noon.

(d) The Applicant shall not establish contact with the victim girl and her family and he alongwith his wife shall not step into the society in which the victim girl and her family members are presently residing.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(f) The Applicant shall regularly attend trial, on every date, unless exempted.

[BHARATI DANGRE, J]