

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.380 OF 2022

Devidas Kondiram Nikalje .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Silvin Y. Kale for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

API Wahule, attached to Wadala Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 05th AUGUST, 2022

P.C:-

1. The applicant came to be arrested on 23/09/2021 in connection with C.R.No.501 of 2021 registered with Wadala Police Station by invoking Sections 354-A, 509 of the IPC and Sections 4 and 12 of the POCSO Act.

The above C.R. came to be registered on a complaint filed by the mother of a minor girl, aged 13 years, informing that on 23/09/2021, at around 2.00 p.m., the applicant, who is aged 60

years and residing in the neighbourhood, committed an act of displaying his private organ to the minor girl. This resulted in registration of C.R.

2. On completion of investigation, charge-sheet is filed and charge under Section 4 is dropped and, presently, the applicant faces charge under Sections 8 and 12 of the POCSO Act.

3. Though the Investigating Officer is right in deleting Section 4, still she is in error in invoking Section 8, which prescribes punishment for sexual assault, which is specifically defined in Section 7 and would involve any physical contact with sexual intent, without penetration. In any case, Section 8 also prescribes a maximum penalty of imprisonment, which shall not be less than three years, but which may extend to five years.

4. In the wake of the accusations levelled against the applicant and the material compiled in the charge-sheet, the applicant is charged under Section 12, which prescribes punishment for sexual harassment and the maximum penalty is extended upto three years and fine.

5. In the wake of the above, since the applicant is incarcerated since last more than one year, he deserves his release on bail. Learned counsel on behalf of the applicant, makes a categorical statement that the applicant shall remove himself from the area where the victim alongwith his family is residing.

6. It is made clear that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application

: ORDER :

- (a) Application is allowed.
- (b) Applicant - Devidas Kondiram Nikalje shall be released on bail in connection with C.R.No.501 of 2021 registered with Wadala Police Station on furnishing P.R. Bond to the extent of Rs.20,000/- with one or two sureties in the like amount.

The applicant shall be released on cash bail for a period of six weeks in lieu of the sureties. During the said period, he shall arrange for the sureties.

- (c) 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. The applicant shall not tamper with evidence.

(d) The applicant shall attend the trial on regular basis unless specifically exempted by the trial Court.

(e) The applicant shall remove himself from the area where the victim alongwith her family is residing, till the conclusion of the trial.

(SMT. BHARATI DANGRE, J.)