

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.564 OF 2021**

Thomas @ Jeans Kurvila .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.A. A. Siddiquie for the Applicant.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

Ms.Dhanalakshmi Iyer for the Complainant.

PSI Shri P.B.Desai attached to Malvani Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 14th JUNE, 2022

P.C:-

1. Heard the learned counsel for the applicant, learned counsel for the complainant and the learned A.P.P. for the State.

2. The applicant is charged for the offences punishable under Sections 377, 376, 452, 341, 354(D), 316, 323, 506(2) of the I.P.C. and Sections 4, 8 and 12 of the POCSO Act. The charge-sheet is filed in connection with C.R.No. 736 of 2017

registered with Malvani Police Station, on a complaint filed by the complainant, who had given her age as 18 years on the date of lodging of the complaint i.e. on 27/11/2017. She narrated that she was acquainted with the present applicant, who was a resident of her locality for last two and half years and the applicant, who is aged 36 years, was known in the locality for unleashing reign of terror and was in habit of threatening the people in locality, if any one dared to complain against him.

3. In the month of December, 2015, while the complainant was all alone in her house, the applicant is alleged to have visited her house, shut the door and by brandishing a knife, forcibly committed sexual intercourse with her. She was threatened, that if she disclose the incident to any one, her family will have to meet with the dire consequences. Her version is that subsequent to this incident, she was repeatedly subjected to the forcible intercourse. In January 2017, the complainant realized that she has conceived on account of physical relationship and when she apprised the applicant about the said fact, he brought some medicine to be administered to her, which was consumed by her. Even thereafter, the applicant continued the physical relationship

with the complainant, but when she complained about severe stomach pain, he carried her to clinic for the purpose of medical examination. She was made to deliver, since the fetus could not be aborted. Resultantly, she delivered a child, who was born in a still condition on 06/06/2017. She was discharged from the hospital on 08/06/2017. The applicant continued to threaten her and used to stalk her. Several such instances are narrated by her in the complaint. Unable to take mental and physical harassment any further, she approached the police station and lodged the report.

4. The investigating machinery was set into the motion and the statement of the complainant as well as her mother came to be recorded. During investigation, medical papers from the concerned clinics were also collected and compiled in the charge-sheet.

5. The learned counsel for the applicant would submit that the birth certificate, which is compiled in the charge-sheet and which gives the date of birth of the complainant as 25/07/1999, is not the birth certificate of the complainant, but as per the statement of the complainant's mother, it is of her third daughter Anisha, who was aged 16 years whereas the complainant was aged 18. Since the name of the child, who was

born on 25/07/1999, is not mentioned in the birth certificate compiled in the charge-sheet, some doubt is created by the learned counsel for the application on the said certificate.

6. The veracity and authenticity of the said certificate will be a matter of trial, but going by the version of the prosecutrix, she was barely of 16 years, when the first incident of forcible sexual assault was committed upon her in the year 2015. The applicant is also accused of the offences punishable under Sections 376 and 377 of the I.P.C. apart from the relevant provisions of the POCSO Act. The narration of the complainant is to the effect that the applicant forced upon her and, thereby, administering threats of dire consequences, repeated the sexual assault and even attempted to abort the child when she conceived out of the sexual relationship, which was forced upon her.

The accusations faced by the applicant are serious in nature and definitely warrants a thorough trial.

In the wake of the evidence compiled in the charge-sheet, he do not deserve his release on bail at this stage.

The application is rejected.

(SMT. BHARATI DANGRE, J.)