

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1231 OF 2021

Imam Ali Mandal	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Neville Deboo, Advocate i/b. Abhay B. Bhoir, for the Applicant.

Smt. A.A. Takalkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JANUARY, 2022
[Through Video Conferencing]

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.590/2017 dated 11.11.2017 registered at Goregaon police station, under Sections 376, 363, 506(1) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children From Sexual Offences Act (for short, 'POCSO Act').

2. Heard Shri Neville Deboo, learned counsel for the applicant and Smt. A.A. Takalkar, learned APP for the State.

3. The FIR is lodged by the mother of the victim. She has stated that the victim was seven years of age. On 11.11.2017, the informant came to home at 2:00 p.m.. At that time, her elder daughter was in the house but the victim was not there. The informant went out to search for the victim. She saw the victim returning home. She made enquiries with her. The victim told her that one unknown boy had come near her. She was taken to his house. She was given a chocolate. Thereafter he had inserted his fingers in her private parts and had kissed her. The victim had tried to resist and she had tried to bite him. In the meantime, a neighbour of that boy came there. The victim also told her that the boy had threatened her. The informant asked the victim whether she would be able to show that particular house. The victim took the informant to that house. The house was locked. At that time one witness Amruta Shinde was present there. She made enquiries with the informant because she recognized the victim. This witness told the informant that the victim was sleeping in that house near the applicant. At that time the applicant had told this witness that

the victim was his cousin but apparently it was not true and, therefore, this witness told this information to the informant. On this basis, the FIR is lodged.

4. The applicant was arrested. The investigation was carried out and the charge-sheet was filed.

5. Learned counsel for the applicant submitted that the case of the victim does not travel beyond Sections 8 and 12 of the POCSO Act for which the maximum punishment may be seven years. The applicant is already in custody for more than four years and, therefore, bail should be granted to him. He submitted that the witness Shinde's version does not appear to be probable. The medical evidence does not support the prosecution case.

6. Learned APP opposed this application. She relied on the statements of the victim, informant and witness Amruta Shinde. She submitted that the offence of aggravated penetrative sexual assault is made out, for which, the maximum punishment is life imprisonment. She submitted that there is

no reason for the informant to implicate the applicant falsely.

7. I have considered these submissions. The victim has narrated the incident in her statement recorded under Section 164 of Cr.P.C. She has stated that the culprit had inserted his fingers in her private parts and had kissed her forcibly. He had also threatened her. She has made a reference to some neighbour, who had come there. The applicant had told that neighbour that the victim was his cousin.

8. The victim's statement corroborates the informant's version as the victim had taken the informant to the applicant's house. At that time the witness Shinde met them and, therefore, her statement is also important. She had seen the applicant sleeping in the house. He was not wearing a shirt. The victim was sleeping near the applicant. That time, she made enquiries. The applicant told this witness that the girl was his cousin. This witness also asked the victim her name. The victim had given her name. The witness did not realize that the applicant was lying but when the informant came there with the victim looking for the applicant; at that time, this witness realized that

something serious had happened. Therefore, this witness gave information to the informant about the false statement made by the applicant and regarding what she had witnessed. This statement is quite important in the context of the case.

9. The medical papers show that the victim was having pain in the abdomen and there was burning sensation, which is also corroborative of the victim's case. The offence is quite serious. There is sufficient evidence against the present applicant. As rightly submitted by learned APP, Section 5(m) of the POCSO Act is also made out for which the punishment is provided under Section 6 of the POCSO Act, which may extend to life imprisonment and the minimum sentence provided is 10 years. Therefore, no case for grant of bail is made out. The application is rejected.

PRADIPKUMAR
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DESHMANE

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(SARANG V. KOTWAL, J.)

Deshmane (PS)