

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

BAIL APPLICATION NO.1077 OF 2022

Rajjak Saipansab Bagwan

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

...

Mr. Pandit Kasar for the Applicant.

Ms Rutuja Ambekar, APP for Respondent No.1-State.

Ms Pratibha D. shelake for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED :29th NOVEMBER, 2022.

P. C. :-

1. This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Special Case No.320 of 2021 pending on the file of learned Additional Sessions Judge, Pune, for offences punishable under Sections 376(3), 376 AB of the Indian Penal Code and Sections 3, 4, 5(n), 5(m), 6, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Pandit Kasar, learned counsel for the Applicant, Ms Rutuja Ambekar, learned APP for Respondent-State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The crime against the Applicant was registered pursuant to the first information report lodged by the mother of the victim at Pimpri Chinchwad police station. The victim is a 3 year old child. She has stated that she used to go to the house of 'Nana' to play. When she was questioned what 'Nana' had done to her, her reply was yes, he did ('han-kiya'). Learned counsel for the Applicant submits that the victim has not named the Applicant and that there is no material to indicate that the victim refers to the Applicant as 'Nana'.

4. It is pertinent to note that the victim is a child of 3 years and may not be able to give detail narration of the incident. Whether she is a competent witness or not will be decided during trial. Nevertheless, a perusal of the FIR lodged by the mother of the victim prima facie reveals that on 25/02/2021 she saw her daughter, who was about 3 years of age coming out of the house of the Applicant, who is her neighbour and relative. The victim was crying. The Complainant went to the house of the Applicant and saw that he was alone in the house. When she questioned the victim, she complained of pain in her private parts. She examined the private parts of the victim and she saw white discharge on her underwear. The Complainant suspected that

the Applicant had sexually abused her minor daughter and after consulting with her husband, she lodged the complaint against the Applicant.

5. The victim was referred for medical examination. The medical report prima facie reveals that there was perihymenal inflammation. The Doctor has opined that the clinical examination findings are suggestive of vaginal penetration. The medical records thus, prima facie indicate that the victim was sexually abused.

6. The statement of the mother of the victim, duly corroborated by medical evidence, prima facie proves complicity of the Applicant in aforesaid crime. The offence is of serious nature. The Applicant is the neighbour of the Complainant. Possibility of the Applicant interfering with the witnesses cannot be ruled out.

7. Considering the gravity of the offence, I am not inclined to grant bail. Hence, the application is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)