

Zahir Abdul Gafoor Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr. Atin Pathan for the applicant.
Mr.Ajinkya Udane for the complainant.
Mrs.Rutuja Ambekar, APP for the State.
PI Shri Irfan I. Shaikh from Malwani police station.

CORAM: BHARATI DANGRE, J.
DATED : 7th JULY, 2022

P.C:-

1 The applicant seek protection from arrest in the wake
of the accusations faced by him u/s. 323, 324, 326, 504 r/w
Section 34 IPC and the subsequent additions of Section 4, 8, 12
of the POCSO Act.

2 Perusal of the record would reveal that the subject C.R came to be registered on a complaint filed by one Sadiq Allauddin Saikh, who reported about an incident dated 9/9/2019 when he state that there was some quibble going on between Amina Shaikh, Irfan Shaikh, Zaheer Shaikh and Arshad Shaikh on the account of putting up some *patra/compound* in the lane.

He also noted that the quibble continued for last two days. Thereafter, he alleged that when he went to intervene, Irfan Shaikh assaulted him by hands and asked his reason for intervention. At that time, it is alleged that Irfan's brother Arshad Shaikh picked up the weighing scale on his cart and threw it at the complainant. Similarly, Zaher Shaikh is also alleged to have assaulted him by means of iron weapon like knife on his head. This resulted in invoking Section 323, 324, 326, 504 r/w Section 34 of IPC.

3 During the course of investigation, statement of witnesses came to be recorded, which prompted the Investigating Officer to invoke the provisions of POCSO Act.

In respect of the incident dated 19/9/2019, statement of Nida Rahim Shaikh, daughter of Amina, who had a brawl on account of putting up of a patra/tin sheet. In her statement dated 29/9/2019. She allege that her specific role to the applicant of pulling her mother by her hair and assaulting her. She stated at that time, when she also intervened and came to the rescue of her mother, he pulled her dupatta and pushed her and she was beaten by Suleman and in that incident, one chain and earring belonging to her, fell on the ground. Her supplementary statement came to be recorded on 9/10/2019, where she state that Suleman and Abdullah assaulted her and Abdullah had touched her chest.

Her another statement recorded on 4/1/2020, contain a further improvisation. She state that Abdullah had touched her chest and when she fell to the ground, the present applicant touched her private part through her clothes and pressed it. It is also alleged that he inserted two fingers in her private part. This version resulted in invoking the relevant provisions of POCSO Act since the girl, who recorded her statement is aged 17 years.

4 On perusal of the accusations and upon hearing the counsel for the complainant, it is apparent that the version of the minor girl is at variance and when the incident was first reported, no one has referred to such an incident of she being sexually abused. Even her mother Amina, in her statement recorded on 12/10/2019 has stated that Irfan had misbehaved with one girl named Itra by pulling her dupatta and touching her chest and by kicking her on the private part.

5 In the wake of the discrepancy in the version of the prosecution case, and particularly, when the incident had taken place in the year 2019, the applicant on his arrest, deserve release on bail as no custodial interrogation is required.

He shall, however, attend to the Investigating Officer and assist him in carrying out the investigation. Hence, the following order :-

ORDER

- (a) In the event of his arrest, the Applicant – Zahir Abdul Gafoor Shaikh in connection with C.R.No. 738/2019 registered with Malvani Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) 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.
- (c) The Applicant shall report to the Investigating Officer as and when called and render all his co-operation to the Investigating Officer.

Application is disposed off.

(SMT. BHARATI DANGRE, J.)