

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1911 OF 2021

Prakash Sadashiv Ohol ...Applicant

vs.

The State of Maharashtra & Anr. ...Respondents

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Mr. Zaid Qureshi, for the Applicant.

Ms. V. Shinde, APP, for Respondent/State.

Deepal Thakkar, for Respondent No.2.

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CORAM : ANUJA PRABHUDESSAI, J.

DATE : 24 NOVEMBER 2022

P.C.:

Learned Counsel for the Applicant seeks leave to amend the application to redact the name of the victim. Leave granted. Amendment to be carried out forthwith.

2. This is an application under Section 439 of Cr.P.C. filed by the aforesaid Applicant who is facing trial in Special POCSO Case No.7 of 2020 pending on the file of Special Court (POCSO), Pune.

3. Heard learned Counsel for the Applicant and learned APP for the Respondent State. Perused the records and considered the

submissions advanced by learned Counsel for the respective parties.

4. The Applicant is alleged to have sexually abused his 5 year old daughter. The said accusations are levelled by the wife of the Applicant. She has stated that on 26 June 2019, the victim had complained of abdominal pain. She took her to Dr. Aarti Gupta. The complainant claims that the doctor, upon examining the victim, had opined that the victim was sexually abused and advised her to take the victim to Sassoon Hospital. When the complainant questioned the victim, she informed her that the Applicant herein had inserted his finger in her vagina. The complainant alleged that on 27 June 2019, during night hours, she saw the Applicant removing the underwear of the victim. When questioned, the Applicant told her that he was checking whether the victim had wet the bed. The complainant has alleged that the victim had not urinated and that the Applicant was falsely trying to justify his act. She then lodged the FIR on 7 November 2019 in respect of the said incident on 26 June 2019.

5. The child, who is about 5 years of age, has made a statement that the Applicant herein had inserted his finger in her vagina. The victim had allegedly informed the complainant about the incident and the complainant also alleges that on 27th June, she had seen the Applicant removing the underwear of the victim. The complainant did not lodge the complaint immediately after the incident but filed the complaint about 5 months later, after she had left the

matrimonial home due to matrimonial dispute. In such circumstances, the possibility of the victim being tutored cannot prima facie be ruled out.

6. The statement of Dr. Aarti Gupta, who had allegedly examined the victim on the very next date and had suspected sexual abuse of the victim, has not been recorded. The certificate dated 26 June 2019 issued by Dr. Aarti Gupta reveals that the victim had complained of pain while passing urine and the complainant was advised to take the victim to Sassoon Hospital to rule out possibility of foul play. The complainant, for the reasons not known, did not take the victim to Sassoon Hospital despite the advise of Dr. Aarti Gupta. She lodged the complaint on 7 November 2019, which was about 5 months after the date of the incident. After registration of the offence, the victim was referred to Sassoon Hospital. She was medically examined and no injury was noticed on her private parts or any other part of the body. The doctor has opined that there was no evidence of hymenal tear. Considering the nature of accusations and the nature of supporting material, the Applicant is entitled for bail.

7. It is stated that the Applicant is in custody since 7 November 2019. Charge is not yet framed and considering the large pendency, there is no possibility of the trial being concluded in immediate future.

8. Under the circumstances, the application is allowed on the following terms and conditions:-

- (i) The Applicant who is facing trial in Special POCSO Case No.7 of 2020 pending on the file of Special Court (POCSO), Pune arising from C.R. No.1159 of 2019 registered with Hinjewadi Police Station, Pune, is ordered to be released on furnishing bail bond in the sum of Rs.25,000/- with one or two sureties in the like amount ;
- (ii) The Applicant shall report to Hinjewadi Police Station Pune once in two month on every 1st Monday between 11.00 a.m. to 02.00 p.m. until further orders;
- (iii) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence in any manner ;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile/contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

9. Bail Application stands disposed of in above terms.

(ANUJA PRABHUDESSAI, J.)