

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

**CRIMINAL BAIL APPLICATION NO. 2 OF 2021**

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Satishkumar Dharmadev Sharma

..Applicant

V/s.

The State of Maharashtra and Anr.

..Respondents

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Mr. Aashay Topiwala a/w Ms. Anjali Patil for the Applicant.

Mr. S.R. Agarkar, APP for the Respondent/State.

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**CORAM : C.V. BHADANG, J.**

**DATE : 15 MARCH 2022**

**P.C.**

1. By this application, the Applicant is seeking release on bail in Crime No. 13 of 2019 of Police Station Nhavasheva, Navi Mumbai, under Section 376-AB read with Section 5 (f) (n), 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 ('the said Act' for short).

2. The aforesaid crime is registered on the basis of the complaint dated 14.02.2019 lodged by the mother of the victim girl. The date of birth of the victim as per Transfer Certificate from Ram Krishna Saradmoni Vidyapith, Siliguri, Assam, is 20.08.2004. Thus, on the date of incident i.e. on 10.02.2019, the victim was 14 years and 6 months of age. The father of the

victim was dead and mother was residing with the Applicant in a room at Ulve. The victim was residing in the school hostel. According to the victim on 09.02.2019 at about 4.30 p.m., the Applicant went to the hostel of the victim and took her on a two wheeler on the pretext of she being taken for medical treatment. The mother of the victim was away at Breach Candy Hospital, Mumbai. According to the informant, she slept at the house of the Applicant on 10.02.2019 at about 10.30 p.m., the Applicant fondled her and thereafter had forcible sexual intercourse with her. This incident was narrated to the mother of the victim on following morning, after which the FIR was registered. On completion of the investigation, a chargesheet is filed. The Applicant was arrested on 12.01.2019 and since then, he is in custody.

3. I have heard learned counsel for the parties. Perused record.

4. There is no dispute that looking to the date of birth of the victim, she was about 14 years and 6 months of age and is a 'child' within the meaning of the said Act. However, a perusal of the medical report shows that history given that the Applicant is at variance with the version of the Applicant having sexual intercourse with her. The history given to the medical officer is

that after having fondled her, the Applicant inserted finger in her private part.

5. The learned APP submitted that even assuming said allegation, the offence would fall under penetrative sexual assault under Section 3, which is punishable under Section 4 of the said Act.

6. In my considered view, prima facie at this stage, there are two versions, whether the Applicant had sexual intercourse with her as claimed by her in her statement or whether the incident as narrated to the medical officer had happened. The perusal of the medical report shows that there is no final/conclusive opinion given which was reserved for report of the FSA. No final report is produced on record. The investigation is complete and the chargesheet is filed. The Applicant is in jail for more than 3 years now. Thus, I find that further detention of the Applicant pending trial is not necessary or justified.

7. In the result, the following order is passed:

**ORDER**

i) The Applicant **Satishkumar Dharmadev Sharma** be released on bail in Crime No. 13 of 2019 of Police Station Nhavasheva, Navi Mumbai, on executing a PR Bond in the sum

of Rs.25,000/- with one or two solvent sureties in the like amount.

ii) The Applicant shall undertake to remain present before the learned Special Court, during the course of trial, unless exempted.

iii) The Applicant shall furnish his native place address as well as local address along with proof before the Special Court.

iv) The Applicant shall not directly or indirectly make any attempt to contact the victim or any other prosecution witnesses and shall not otherwise tamper with the prosecution evidence/witnesses.

v) In the event of breach of any of the conditions, the bail is liable to be cancelled.

vi) It is made clear that the observations herein are essentially of a prima facie nature and the learned Special Court shall not be influenced by the same at the trial.

vii) The Criminal Bail Application is disposed of in the aforesaid terms.

**(C.V. BHADANG, J.)**