

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2802 OF 2021**

Mubshir @ Jafar Mujfar Ahamad .. Applicant
Versus
The State of Maharashtra .. Respondent

**WITH
BAIL APPLICATION NO.2700 OF 2021**

Fazal Ahmed Jafarulla Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Akhilesh Singh i/b Ms.Neetu Singh for the Applicants in both the Applications.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

API Shivkumar Gaikwad, attached to Mira Road Police Station, present.

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**CORAM: BHARATI DANGRE, J.
DATED : 12th OCTOBER, 2022**

P.C:-

1. The applicants are facing charge for the offences punishable under Sections 4, 6, 8, 10 and 12 of POCSO Act alongwith Sections 323, 354, 376(2)(j), 376(2)(n), 377, 506

of IPC. The applicant came to be arrested on 06/09/2020. The victim is a young girl, aged three and half years.

2. I have perused her statements given to the police and recorded before the learned Magistrate. The young girl gives the exact description of the act, which was performed with her by her father and other co-accused, in whose company she was left by the father.

I am not ready to accept the argument of the learned counsel for the applicant that the girl has been manipulated by her mother, since there is matrimonial discord between them. A young girl, approximately aged three and half years, is unable to understand the consequences of the act and by action she has deposed before the learned Magistrate, about what was done to her. The act complained of, would definitely fall within the purview of manipulation of the part of body so as to cause penetration into the vagina and, therefore, would attract Sections 4, 8 and 12 of the POCSO Act.

The applicants are accused of a serious charge of sexually assaulting a child aged three and half years and, therefore, they do not deserve their release on bail.

The applications are, therefore, rejected.

(SMT. BHARATI DANGRE, J.)