

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2843 OF 2021.

Saleha Aurangzeb Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Pankaj S. Pandey for the applicant.
Mrs.Rutuja Ambekar, APP for the State.
Mr.Shailesh Kharat for the complainant – respondent no.2.
Mr.S.B. Barela, API From Bhiwandi City police station.

CORAM: BHARATI DANGRE, J.
DATED : 14TH NOVEMBER, 2022

P.C:-

1 The applicant is charged in C.R.No.I-424/2018, registered with Bhiwandi police station for commission of offence punishable u/s.363, 376(a)(b), 506, 201 r/w Section 34 of the IPC and Sections 4, 6 and 21 of the POCSO Act.

2 The applicant is charged as accused no.2 and when the charge-sheet placed on record is perused, prima facie it can be seen that she faces accusation u/s.21 of the POCSO Act, which prescribe punishment for failure to report a case.

Sub-section (1) of Section 21 on being proved that any person has failed to report the commission of offence under sub-section (1) of Section 19 or Section 20, shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

3 In the backdrop of the said statutory provision when the circumstances as compiled in the charge-sheet, are perused, it can be seen that the applicant is unnecessarily languishing in jail, despite the limited role attributed to her.

4 On 10/12/2018, the victim girl, aged 4 years was playing in the neighborhood and in the afternoon, the complainant – her mother noticed some abnormality on her private part and when she complained of pain, she was told by the victim girl that the accused no.1 has inserted her finger in her private part. The complainant approached the applicant, residing in the neighborhood, and in the FIR, she refers to her as a social worker and she invited her attention to the injury sustained by her daughter, who in turn, told her to confront the victim's mother with the said aspect. The victim was running fever and apprehending that the mother of the accused would indulge into a quarrel, she kept quiet for the said night.

On the next date, she informed her husband about the said incident, as a result of which by reporting to the police station, an offence came to be registered.

5 The medical examination, no doubt support the case of the prosecution to the extent of injury, but as far as the present applicant is concerned, the charge-sheet ascribe a limited role to her of not taking any steps or reporting the incident. The charge-sheet also accuse the applicant of hiding the fact of sexual assault from the Doctor when she asked her daughter to take the victim to the doctor on 10/12/2018, who disclosed that she sustained any injury near her private part by means of a stick and therefore, was running fever. The statement of the doctor is compiled in the charge-sheet.

6 As per the version of the complainant, she approached the applicant being a social worker, but in her statement u/s.164 Cr.P.C, she has stated that she approached her as she was residing in the neighborhood. It is therefore, quite possible to infer that being a woman residing in the neighborhood, the complainant confronted her with the incident and the injury sustained by the victim daughter.

In any case, her case would fall within first Part of Section 21 of POCSO Act, which would have invited a maximum penalty of six months on being convicted, on the prosecution having conclusively established that she has failed to report the commission of the offence. In any case, she has undergone the maximum sentence which could have been invoked if she would have been convicted u/s.21(Part I). Her Bail Application has

been rejected on two occasions mechanically. The applicant ought to have approached the Court, seeking her release on the ground that the applicant has undergone the complete sentence, but even no steps were taken to that effect. The present application which is filed on 4/8/2021 is pending before this Court since then.

7 The above scenario emerging, is really unfortunate where on three occasions, the Bail Applications filed by the applicant is rejected and before this Court, the application is pending since more than a year.

 Recently, the Hon'ble Apex Court in case of *Sonadhar Vs. The State of Chhattisgarh in SLP(Crl.No.529/2021)*, has cast the responsibility upon the State/District Legal Services Authority to take appropriate steps to implement the provisions of Section 436-A of Cr.P.C in letter and spirit. Here is the case that it is not one half of the sentence which the applicant has undergone, but she has undergone the entire sentence which could be imposed u/s.21. As far as Section 201 of IPC is concerned, ultimately it will be for the prosecution to prove, whether she is responsible for the destruction of the evidence, but prima facie it can be seen from the charge-sheet that the mother refused to take the victim to the hospital and at her instance, accused no.3, daughter of the present applicant took the victim to the hospital. In any case, the parents also reported about the incident on the next date and the girl was subjected to medical examination only after lodging of the FIR. The scenario

is unfortunate and it can be only said that the applicant has been disappointed by the entire system as she continues to be still incarcerated. Though I could have imposed some costs upon the State for her unlawful detention/ incarceration, I deem it appropriate to leave it to the Sessions Court while it tries the accused persons of the charges levelled to keep in mind the aforesaid observations of this Court. Hence, the following order :-

ORDER

- (a) The Applicant – Saleha Aurangzeb Khan in connection with C.R.No.I-424/2018 registered with Bhiwandi 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. The Applicant should not tamper with evidence.
- (c) The applicant shall report to the police station as and when called. The Applicant shall attend the trial on regular basis.

(d) On being released on bail, the applicant shall furnish her contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

8 The learned counsel for the complainant appointed by the Legal Aid shall be paid remuneration within a period of two weeks and this Court would like to place on record his able assistance.

The Application is allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)