

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

BAIL APPLICATION NO. 3101 OF 2021

Amol Bansi Bhosale ...Applicant

Versus

The State of Maharashtra ...Respondent

SANTOSH
SUBHASH
KULKARNI

Digitally signed
by SANTOSH
SUBHASH
KULKARNI
Date: 2022.07.01
19:10:47 +0530

Ms. Rekha Musale, i/b Dayanand Avari, for the Applicant.

Mrs. J. S. Lohokare, APP for the State/Respondent.

Ms. Devyani Kulkarni, Appointed Advocate through Legal
Aid, for Respondent no.2.

Mr. P. V. Parkhe, PN, Alefata Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 29th JUNE, 2022

ORDER:-

1. The applicant, who is arraigned in CR No.295 of 2020, registered with Alephata Police Station, Pune, for the offences punishable under Sections 354, 354D and 506 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 8 and 12 of the Protection of the Children from Sexual Offences Act, 2012.

2. The gravamen of indictment against the applicant runs as under:

The first informant resides at Anne, Taluka Junnar, along with her husband, son and daughter. They run a show-material store. In the afternoon, her daughter (the victim)

attends the shop to relieve her father for lunch. On 19th July, 2020, while the victim was alone at the shop, the applicant came thereat and caught hold of her hand. The applicant asked the victim to accompany him as he wanted to show her to his parents. When the victim protested, the applicant released her and threatened her with dire consequences. On the next day, the applicant again came to her shop and asked her as to whether she would accompany him, and threatened with dire consequences if she did not accompany him. The victim got scared and started crying. Manohar Chaugule, who runs a medical store adjacent to the shop of the first informant, called and apprised the first informant. Thereupon, the first informant lodged the report.

3. I have heard Ms. Musale, the learned Counsel for the applicant, Mrs. Lohokare, the learned APP for the state and Ms. Kulkarni, the learned Counsel who was appointed to espouse the cause of the respondent no.2.

4. The learned Counsel for the applicant, at the outset, submitted that even if the prosecution case is taken at par, the offence punishable under Section 8 of the POCSO cannot be said to have been made out. Nor can it be said that the applicant subjected the victim to sexual harassment. It was

further submitted that alleged incident occurred on 19th July, 2020 and yet the FIR was lodged on 25th July, 2020. This delay, according to the learned Counsel for the applicant, impairs the prosecution case. In any event, the applicant cannot be said to have touched the hand of the victim with intent to sexually exploit her.

5. The learned APP, on the other hand, resisted the prayer. The fact that the applicant caught hold of the hand of the victim and forced her to accompany him to his house, according to the learned APP, clearly falls within the dragnet of the offences punishable under Sections 354 and 354D of the Penal Code. A clear case of stalking of a 14 year old girl is made out. Thus, the applicant does not deserve to be released on bail.

6. Ms. Kulkarni, the learned Counsel for respondent no.2, supplemented the submissions of the learned APP. Laying emphasis on the fact that the applicant attempted to outrage the modesty of the victim while she was alone at her shop, Ms. Kulkarni would submit that the applicant does not deserve the exercise of discretion in his favour.

7. I have given anxious consideration to the aforesaid submissions. There is not much controversy over the basic facts. The victim is a 15 year old child. She was then studying in 9th Standard. The applicant is a co-villager. The applicant was then 20 year old. The alleged incident occurred on 19th July, 2020. On the following day, the applicant allegedly again approached the victim and threatened her if she did not accompany him. It is not the prosecution case that on the next day also the applicant attempted to molest the victim in any manner.

8. The version of the victim as regards the incidents dated 19th July, 2020 as well as 20th July, 2020, *prima facie*, finds support in the statement of Manohar Chaugule, the adjacent shopkeeper. Though the claim of Manohar Chaugule of having witnessed the occurrence dated 19th July, 2020, was sought to be assailed on behalf of the accused on the count that there is nothing to indicate that the said witness had opportunity to notice the alleged occurrence, yet the claim of Manohar Chaugule as regards the incident dated 20th July, 2020, can hardly be assailed on the said ground as the same is supported by the version of the first informant and her husband. In the circumstances of the case, especially having

regard to the age of the victim, the delay of a couple of days in reporting to police does not seem to distract materially from the prosecution case, at this stage.

9. On the core of the occurrence, it is imperative to note that, the victim claimed that the applicant caught her hand and asked her to accompany him so that he could show her to his parents. *Prima facie*, the said act on the part of the applicant, if considered in juxtaposition with the utterances of the applicant which, in a sense, spell out the intent of the applicant, renders the applicability of the provisions contained in Section 8 of the POCSO Act debatable.

10. The fact that the applicant pursued the victim on the second day, despite a clear rebuke by the victim on 19th July, 2020 may, however, bring the conduct of the applicant within the dragnet of Section 354D of the Penal Code. In this context also, it is necessary to note that the applicant again asked the victim to accompany him to meet his parents. The applicant has already gone more than the minimum sentence prescribed under Section 354 of the Penal Code and Section 8 of the POCSO Act, 2012.

11. The investigation is complete and charge-sheet has been lodged. The applicant appears to have roots in society to bind him down to his place of abode. In my view, a direction not to enter in the village Aane, for a period of six months, would adequately protect the interest of the victim and her parents.

12. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant – Amol Bansi Bhosale be released on bail on furnishing a P. R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Khed-Rajgurunagar, Pune.

(iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The applicant shall not contact the victim and her parents for any purpose whatsoever.

(v) The applicant shall not enter the limits of the village Aane for a period of six months from the date of his release.

(vi) The applicant shall furnish the address on which he would be available during the said period of six months, and his permanent address and contact details as well, to the Police Inspector, Alephata Police Station and keep him updated about any change in address and contact details.

(vii) The applicant shall regularly attend the proceedings before the learned Special Judge.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant.

[N. J. JAMADAR, J.]