

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

CRIMINAL BAIL APPLICATION NO. 3374 OF 2021

Kapil Suresh Taak

..Applicant

V/s.

The State of Maharashtra & Anr.

..Respondents

Dr. Uday Warunjikar for the Applicant.

Mr. Y.Y. Dabke, APP for the Respondent/State.

Mr. Pranot P. Pawar for the Respondent No.2.

CORAM : C.V. BHADANG, J.

RESERVED ON : 8 FEBRUARY 2022

PRONOUNCED ON : 3 MARCH 2022

P.C.

1. By this application, the Applicant (accused No.2) is seeking bail. The Applicant along with co-accused has been chargesheeted for the offence punishable under Section 377, 363, 343, 289, 323, 324, 504, 506, 143, 145, 149 of IPC and Section 4 and 8 of the Protection of Children from Sexual Offences Act ('POCSO Act' for short) in Crime No. 305 of 2021 of Police Station Pimpri Chinchwad, District Pune.

2. The aforesaid offence is registered on the basis of the complaint dated 30.04.2021 lodged by Mrs. Dudhkaur Taak. The informant is doing the business of selling of kitchen utensils

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in Pimpri vegetable market. On 30.04.2021, she had noticed a video showing her son along with two other minor children from her locality. The video also depicted that some persons were assaulting and abusing the children after removing their clothes. The informant made inquiry with her son, when she came to know that about 2 to 3 months prior to lodging of the complaint, the Applicant and the co-accused as named in the FIR had taken her son and two other minor children from her neighbourhood to Pimpri, Pune and had assaulted them with belts after removing their clothes. Accused Sachin brought Zandu Balm for being applied to the anus. They pulled private part of the victims and two of them inserted their fingers in anus of the victims. The Applicant and co-accused Ajay were doing video shooting on mobile. All the accused including present Applicant abused the victims, gave kicks and fist blows and assaulted the victims by means of belt and accused Sunny let loose a dog on their person. They threatened the victims not to disclose the incident to anyone.

3. On such a complaint being lodged, the offence came to be registered and after investigation a chargesheet is filed.

4. The learned Special Judge has refused to release the Applicant on bail.

5. I have heard the learned counsel for the Applicant and the learned APP and also the learned counsel for the Respondent No.2. Perused record.

6. It is submitted by the learned counsel for the Applicant that the FIR is belated and is exaggerated. It is submitted that the ingredients of Section 4 and 8 of the POCSO Act are not made out, as the children were not sexually abused. It is submitted that there is a discrepancy in the statement recorded under Section 161 and 164 of IPC. The ingredients of Section 363 or 377 of IPC are not attracted. The learned counsel pointed out that the FIR named about 19 accused. However, the charge sheet is filed only against 7, which goes to show that contents of the FIR were unfounded and/or exaggerated. It is submitted that only 2 accused were arrested, out of which one is released on bail. It is submitted that the role of the Applicant is not clear and the investigation being complete, there is no justification for detention of the Applicant behind bars.

7. The learned APP has submitted that the offence is serious as the children have been sexually abused and assaulted and a video recording of the incident was done by the present Applicant, which has been seized, which shows the involvement of the present Applicant.

8. I have considered the circumstances and the submissions made. It is true that the FIR is lodged after about 2 months. However, the delay in lodging FIR has to be considered in the facts and circumstances of each case. In the present case, the minor son of the informant along with 2 other minor boys in her neighbourhood were taken by the accused to Pimpri and there they were assaulted after removing their clothes. The allegations in the FIR to say the least are serious. The investigation has disclosed that it is the present Applicant, who made the video recording of the incident in his mobile, which was circulated and on account of that video recording, the informant got the knowledge about the incident and on inquiry with her son, the complaint came to be lodged. Thus, prima facie in my considered view, the delay in lodging the FIR may not be decisive in this case. I have also gone through the statements of the victims recorded under Section 164 of Cr.P.C. and they have specifically named the present Applicant. The contention that the offence under Section 4 and 8 of the POCSO Act is not made out, cannot prima facie be accepted, looking to the nature of allegations. The claim of parity with Vijay Chavan, who has been released on bail by the learned Special Judge also cannot be accepted, inasmuch as the learned Special Judge himself has refused to extend such parity. That apart, the statement of victims specifically named the present Applicant as one of the

persons, who was involved in the incident. No case for grant of bail is made out.

9. The criminal application is rejected.

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

(C.V. BHADANG, J.)