

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3854 OF 2021

Akhilesh Ashok Gupta	]	..	Applicant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Sanjeev Kadam a/w Prashant Raul for the Applicant.

Mr.Ajinkya Udane for Respondent No.2.

Smt.A.A. Takalkar, APP for the State.

ASI K.A. Rane, Sahar Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 26th AUGUST, 2022.

P.C.

1] Heard learned counsel for the parties.

2] The Applicant face charge under Section 363, 354, 354A of the Indian Penal Code alongwith Section 8 of the POCSO Act. He came to be arrested on 01.06.2021.

On completion of investigation charge-sheet is filed and on its perusal it can be discerned that the subject CR was registered on the complaint filed by the mother of the victim girl aged 9 years studying in 4th standard. She stated that the Applicant is residing in the neighbourhood in the chawl and she accused him of giving money to her without any reason for last two months and she had warned her daughter not to accept the same.

She further state that some two months back when the son of the Applicant and her daughter were playing in front of their house, she noticed that the Applicant had inappropriately touched her. She brought her home and warned that she should stay away from the Applicant.

3] As per the complaint on 01.06.2021, when she returned from work in normal routine, she was informed by her elder daughter that the Applicant had picked the victim girl from their room and touched her inappropriately by pressing her chest.

When the victim girl was asked, she stated that the Applicant had forcibly took her from her room and when she shouted that she should be left alone, he did not pay any heed to her request and pressed her chest and when her elder sister arrived at the spot, she was released. The mother questioned the Applicant, who gave evasive answers and therefore she dialed 100 number and police arrived at the spot.

4] On completion of investigation charge-sheet is filed. The statement of victim girl has also been recorded, where she corroborate the version given by her mother, but she state that when she and her friend were playing in front of the house of the Applicant, inadvertently one of them banged on the door of his house, as a result of which he came out and pulled her inside his house and touched her inappropriately.

5] The statement of the complainant and the version of the victim girl is at variance on whether the girl was picked up from her house and therefore commission of offence under Section 363 of the Indian Penal Code becomes doubtful.

As far as Section 354 of the Indian Penal Code is concerned, it is punishable for a term which shall not be less than one year but may extend to five years. Section 354A of the Indian Penal Code is punishable for a term which may extend to three years. Similarly, offence under Section 8 of the POCSO Act is also punishable for 5 years.

6] Considering the nature of accusations and the fact that the Applicant is incarcerated since 01.06.2021 and as till date charge has not been framed, he cannot be kept incarcerated indefinitely.

Learned senior counsel Mr. Sanjeev Kadam for the Applicant specifically makes a statement that the Applicant shall not reside in the area in which the victim girl and her family is residing and shall shift to Kashimira immediately after his release on bail and hence I am inclined to release him on bail.

7] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

8] I must appreciate the assistance rendered by the learned appointed counsel Mr. Ajinkya Udane for the complainant. The Maharashtra Legal Services Committee shall make payment of his remuneration within a period of four weeks from today.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Akhilesh Ashok Gupta shall be

released on bail in connection with C.R.No.225 of 2021 registered at Sahar Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

On his release, the Applicant shall furnish current residential address at Kashmirira to the Investigating Officer.

(c) The applicant shall report to the concerned Police Station on first Monday of trimester between 10.00 a.m. to 12.00 noon and except for marking attendance he shall not enter into the jurisdiction of Sahar Police Station.

(d) 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 and should not tamper with evidence.

(e) It is made clear that the observations made above are restricted for determination of the application and the trial Court in any way shall not be influenced by the said observations, limited and restricted for this purpose.

(f) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]