

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4259 OF 2021

Ayyub Yusuf Nut @ Shaikh .. Applicant
Versus
The State of Maharashtra & Anr. .. Respondents

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Mr.Aniket Vagal with Mr.Kunal Pednekar for the Applicant.
Ms.Anamika Malhotra, A.P.P. for the State/Respondent.
Mr.A.K.Upadhyay for the Intervenor.
API Mukta Phadatare, attached to Shanti Nagar Police Station,
present.

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CORAM: BHARATI DANGRE, J.
DATED : 27th SEPTEMBER, 2022

P.C:-

1. The applicant is arraigned as an accused in C.R.No.I-1161 of 2019, registered with Shantinagar Police Station and is facing the charge under Section 354, 506 (2) of IPC and under Sections 8 and 12 of POCSO Act in Special Case No.280 of 2020.

2. Heard learned counsel for the applicant, learned counsel for the complainant i.e. respondent No.2 and learned A.P.P. for the State.

Pertinent to note that the offence came to be registered on directions issued by the learned Additional Sessions Judge-8, Thane on 19/11/2019 to investigate the matter under

Section 156(3) of Cr.P.C.. Pursuant to this direction, the investigation was conducted and during its course, necessary evidence has been collected.

3. The birth certificate of the victim girl has been collected, which reveal that she was born on 05/11/2007. Her mother lodged the complaint stating that the victim was sexually assaulted by the present applicant.

During the course of investigation, the statement of the victim girl came to be recorded under Section 164 of Cr.P.C. The girl specifically stated that her mother had performed second marriage with the applicant and she was residing with her. She alleged that he used to sexually abuse her by touching her inappropriately and by making her naked, used to sleep with her in a common bed-sheet, in the same condition. When she objected, it is alleged that he had threatened her that if she disclose it to anyone, he will throw acid on her mother as well as put her into dire consequences. She stated that these acts were done by the applicant whenever her mother used to leave the house and she did not disclose this incident till December 2019 and for the first time, she told the mother about the alleged act, when the applicant came to be arrested in some other offence. On the pretext that she was terribly scared of the father, she did not report the incident and only when she told her mother, the complaint was lodged with the concerned police station and the applicant came to be arrested.

4. Considering the nature of accusations under Sections 8 and 12 of the POCSO Act, which would invite a maximum imprisonment upto five years on being convicted under Section 8 and, since, the applicant is incarcerated from 17/03/2020 and he has already completed maximum punishment, which would be imposed on him, if convicted, he deserve his release on bail, subject to the stipulation that the applicant shall remove himself from the Bhiwandi area and except for marking the attendance in Shantinagar Police Station, he shall not step into the said area.

Hence, the following order.

: **ORDER** :

- (a) Application is allowed.
- (b) Applicant - Ayyub Yusuf Nut @ Shaikh shall be released on bail in connection with C.R.No.I-1161 of 2019 registered with Shantinagar Police Station (Special case No.280 of 2020) on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the concerned police station on first Saturday of every trimester between 10.00 a.m. to 12 noon till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- (d) The applicant shall not enter the Bhiwandi area except for the purpose of marking attendance in the police station, as directed in condition No.(c).

(e) The applicant shall not leave the State of Maharashtra, without prior permission of the Special Court.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(g) On being released on bail, the applicant shall furnish his contact number and the complete address of the place where he proposes to reside, to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)