

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**BAIL APPLICATION NO.4094 OF 2021**

|                       |   |    |            |
|-----------------------|---|----|------------|
| Mohammad Javed Sayyed | ] | .. | Applicant  |
| vs.                   |   |    |            |
| State of Maharashtra  | ] | .. | Respondent |

Mr.Prashant Trivedi a/w Irfan Khan i/b Sudha Dwivedi for the Applicant.  
Smt.A.A. Takalkar, APP for the State.  
PSI Pramod Kashid present.

**CORAM : BHARATI DANGRE, J**

**DATE : 14<sup>th</sup> OCTOBER, 2022.**

**P.C.**

1] The Assistant Police Inspector, has filed Affidavit in furtherance of the compliance of the steps taken by him to trace the victim girl. He has stated that the complainant and her family had left the room without any intimation and even an attempt was made to serve her through Post in Bihar, but the serviced report is yet awaited. The communication is addressed to the complainant at her native place in Bihar, but the report is awaited.

2] The Applicant is charged for the offence punishable under Section 354 of the Indian Penal Code and under Section 8 and 12 of the POCSO Act. He came to be arrested on 07.05.2020.

3] With the assistance of the learned APP and learned counsel for the Applicant, I have perused the charge-sheet.

One Kamalkumar Patwa who was working as security guard and discharging his duty outside the building on 07.05.2020 at 13.00 hours, noticed that in an Auto-rickshaw, an unknown person was misbehaving with a girl aged about 10-11 years and he was touching her cheeks and back. Therefore, he raised an alarm and the person was caught on the spot and phone call was made to the police. The girl was taken to the police station and her mother was summoned in the Police Station, who lodged the report.

4] Applicant is charged under Section 8 and 12 of the POCSO Act and though the alleged conduct of the Applicant would fall within the purview of sexual assault amounting to sexual assault as defined in Section 7 of the POCSO Act, it would invite punishment with imprisonment of either description for a term which shall not be less than three years, but which may extend to five years. The Applicant is also accused under Section 12 of the POCSO Act, which prescribe punishment for sexual harassment.

However, it is doubtful whether the act of the Applicant would fall within the purview of sexual harassment and defined in Section 11 of the POCSO Act. In any case, the imprisonment which a person would be required to undergo may extend to 3 years.

5] The Applicant is incarcerated since 07.05.2020 and has completed more than two years of detention. The learned APP state that trial has commenced and statement of one panch witness is recorded. But the fate of the trial in absence of the complainant or victim girl being examined is uncertain. The Applicant cannot be kept

incarcerated indefinitely, though he may take consequences of his act, if the victim supports the case of prosecution at the time of trial.

6] 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.

Hence, following order is passed :

**ORDER**

- (a) Application is allowed.
- (b) Applicant – Mohammad Javed Sayyed shall be released on bail in connection with C.R.No.619/2020 registered at Sakinaka Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) 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.
- (d) The Applicant shall regularly attend trial, on every date, unless he is exempted.

**[BHARATI DANGRE, J]**