

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

7 BAIL APPLICATION NO.1837 OF 2023

RAFIK MUNIR PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S.R. Andhale
APP for Respondents: Ms P. J. Bharad
Advocate for Respondent 2 : Mr. N.S. Salunke

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: November 30, 2023

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PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.689 of 2023 registered with Pathardi police station, District Ahmednagar for the offences punishable under sections 354, 323, 427, 507 and 509 of the Indian Penal Code, u/s 7, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 and under sections 3(1)(w)(i)(ii), 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Investigation was set in motion on the basis of statement of the victim, who is aged about 16 years. She states that on 2.7.2023 she had been to a shop at Tisgaon to purchase a brush and her sister was waiting for the bus at square. When informant came back, she saw that accused was stroking hairs of her sister. When she intervened, accused repeated similar act with her. Even he caught hold collar of the informant and pulled her. When she shouted and attempted to call her grand

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father, her mobile phone was snatched and subsequently broken. Thereafter, police arrived at the spot. Accordingly, incident was reported to the police station leading to the registration of the aforesaid crime. The applicant has been arrested in pursuance of the offence on 3.7.2023. Since then, he is behind bar.

3. Mr. Andhale, learned advocate appearing for the applicant would submit that the applicant is an innocent person and has been falsely implicated in the aforesaid crime. He would submit that investigation in the matter is completed. There is no eye witness to the incident to recognize the applicant being the accused. He would submit that offences alleged are punishable with imprisonment for less than ten years. Further detention of the applicant would not be necessary.

4. Learned A.P.P. and learned advocate appearing for the informant vehemently opposes the prayer. They would submit that offence is serious. Provisions of the Protection of Children from Sexual Offences Act and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are invoked. Further, there are criminal antecedents against the applicant. Recurrence of the similar offence cannot be ruled out.

5. Having considered the submissions advanced, apparently, there are allegations in the FIR that would constitute offences as alleged. However, name of the applicant

is incorporated on the basis of hear-say information. Perusal of the statements in the charge-sheet show that even in the supplementary statement, informant states that she came to know about name of the applicant during the inquiry. Admittedly, incident took place in a public place. Many independent witnesses could have been available. However, charge-sheet do not show statement of any such witness. It is submitted on behalf of the prosecution that 'CCTV' footage in respect of the incident is available, however, as rightly pointed out by the learned advocate appearing for the applicant, it is not made part of the charge-sheet. The applicant is behind bar for more than four months. Investigation in the matter is completed. Veracity of the allegations in the FIR and the charge-sheet would be the subject matter of trial. However, on the basis of the material on record, further detention of the applicant need not be continued. Hence, case is made out for grant of bail. Hence, the following order.

O R D E R

- i. Bail Application is hereby allowed.
- ii. The applicant- RAFIK MUNIR PATHAN be released on bail in connection with Crime No.689 of 2023 registered with Pathardi police station, District Ahmednagar for the offences punishable under sections 354, 323, 427, 507 and 509 of the Indian Penal Code, u/s 7, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 and under sections 3(1)(w)(i)(ii), 3(2)(v-a) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on his furnishing P.B. & S.B. of Rs.50,000/- (Rs.Fifty Thousand), on the following conditions :-

- a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall not make any attempt to establish contact with the victim, her family members or any witness named in the charge-sheet.
 - c] The applicant shall not indulge himself into similar offences.
 - d] The applicant shall attend the trial on each and every effective date.
 - e] The applicant shall not enter into village Hanuman Takali, Tq. Pathardi, District Ahmednagar till conclusion of the trial.
- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

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