



Diksha Rane

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

BAIL APPLICATION NO.153/2023

MOHAMMED YUSUF MUMTAZ ALI ..APPLICANT

VS.

THE STATE OF MAHARASHTRA & ORS. ..RESPONDENTS

Adv. Ayub B. Khan for the applicant.

Ms. Veera Shinde, APP for the State.

Adv. Anish Shahapurkar for the respondent no.3.

PSI Sudhir Korgaonkar, Kasturba Marg Police Station.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 11, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Section 354 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'POCSO Act' for short) registered on 27/11/2021 vide C.R. No.1099/2021 with Kasturba Marg Police Station, Mumbai.

3. The accusations are that the applicant committed an

act against the victim who is a minor constituting an offence under the aforesaid sections. The First Information Report (FIR) was registered on 27/11/2021. The applicant was arrested on 27/11/2021. The maximum punishment for the offence under Section 354 of the IPC is five years imprisonment and the minimum prescribed is one year. So far as the offence under Section 8 of the POCSO Act is concerned, maximum five years imprisonment and minimum three years punishment prescribed. In respect of Section 12 of the POCSO Act, maximum punishment prescribed is 3 years. The applicant has undergone more than one year and ten months. The applicant, thus, has undergone incarceration as an undertrial for more than half of the minimum sentence prescribed under Section 8 of the POCSO Act.

4. Learned APP as well as learned counsel for the respondent no.3-victim opposed the application. It is submitted that the applicant is accused of having committed a serious offence against a minor child. It is further submitted that the possibility of the applicant absconding and not facing trial. It is also submitted that

there is a possibility of threatening the witnesses and the victim cannot be ruled out.

5. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The accusations, no doubt, are serious in nature but the period of custody undergone as an undertrial is a circumstance which needs consideration. In my opinion, the applicant does not appear to be a flight risk. In the facts and circumstances of the present case, considering that the applicant is in custody for more than one year and ten months with no possibility of the trial concluding any time soon, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohammed Yusuf Mumtaz Ali in connection with C.R. No.1099/2021 registered with Kasturba Marg Police Station, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of

Kasturba Marg police station once in two months i.e. on first Monday of every alternate month between 11.00 a.m. and 1.00 p.m. commencing from November 2023.

(d) 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.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the Western Suburbs of Mumbai after being released on bail, till the trial concludes.

(g) The trial Court is requested to record the evidence of the victim in view of the mandate of Section 35(1) of the Protection of Children from Sexual Offences Act, 2012 expeditiously.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(i) The applicant shall surrender his passport, if any, to the investigating officer.

6. The application is disposed of.

7. I appreciate the assistance rendered by Mr. Anish Shahapurkar, the learned Advocate, who appeared on behalf of the respondent no.3 at my request. Learned advocate may be paid the fees/honorarium as prescribed by the Legal Aid Services Authority or if not prescribed, the same is quantified at Rs.5000/-.

(M. S. KARNIK, J.)