



Diksha Rane

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

BAIL APPLICATION NO.282/2023

OSAMA TAJ MOHD. SHAIKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

Adv. Aashay B. Topiwala i/b. Adv. Manpreet Bhagal for the
applicant.

Ms. Rutuja Ambekar, APP for the State.

Adv. Aadesh Kondedeshmukh for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 4, 2023.

P.C. :

1. Heard learned counsel for the applicant.
2. The application for bail is opposed by learned APP for the State and learned counsel for the respondent no.2.
3. This is an application for bail in respect of the offence punishable under Sections 302, 354, 506(2), 201 212 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) registered on 2/7/2019 vide C.R. No.126/2019 with Aarey Police Station.
4. Learned counsel for the respondent no.2 submitted that there are persistent threats by the parents of the

accused insisting the informant and other witnesses to withdraw the cases. If that is so, a request made, the respondents shall consider providing protection to the witnesses in terms of the Witness Protection Scheme, 2018 (hereafter 'the said Scheme, 2018' for short. It is open for the informant and/or the witnesses to make an appropriate application before the trial Court or the Committee constituted under the provisions of the said Scheme, 2018 for protection which shall be considered on its own merits.

5. So far as the merits are concerned, on 9/10/2023, the following order was passed :

"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 Sections 302, 354, 506(2), 201, 212 read with 34 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. registered on 02/07/2019 vide C.R. No.126 of 2019 with Aarey Police Station.

3. At the relevant time the applicant, who is a juvenile, was 16 years and 3 months of age. The applicant is in an observation home at Dongri, Mumbai. The accusations are that the applicant (Child in Conflict with the Law) pushed the victim who was then 13 years of age from the 8th floor. The applicant was arrested on 29/06/2019.

4. The application is vehemently opposed by the learned counsel for respondent No.2 - mother of the victim and learned APP.

5. Learned counsel for the applicant submitted that the applicant has been in custody for more than 4 years. Several decisions are relied upon by the learned counsel for the applicant including that of this Court in support of his case. I

have also perused the order passed by the Children's Court. The application is seriously opposed by the learned APP and learned counsel for respondent No.2.

6. Taking an overall view of the matter, I am, *prima facie* of the opinion that the applicant, being a C.C.L. at the relevant time and who has been incarcerated for more than 4 years, deserves to be released on bail by imposing stringent conditions. In fact, learned counsel for the applicant submitted that the parents of the applicant are voluntarily willing to file an affidavit that if the applicant is enlarged on bail, the parents of the applicant will not reside in the area of Mumbai, Mumbai Suburban and Thane District till the conclusion of the trial, considering the apprehension expressed by the victim's family and as there are various N.Cs. Registered by the victim's family. According to the learned counsel for the applicant all N.Cs. are false.

7. My attention is also invited by learned counsel for the applicant to the order dated 16/07/2022 passed by the trial Court for cancellation of the bail of the co-accused i.e. parents of the applicant. I am also informed that even the applicant is willing to stay out of Mumbai, Mumbai Suburban and Thane district till the conclusion of the trial and is willing to file an affidavit to that effect. It is further assured by the applicant as well as his parents through their advocate that there will not be any attempt on their part to contact the victim's family members or intimidate or threaten them. Learned counsel for the applicant further submitted that so far as the trial is concerned, even the charge has not been framed.

8. Though, *prima facie*, I am in favour of the applicant, I find some substance in the contention of the learned counsel for respondent No.2 that the material witnesses are apprehensive of threats if the applicant is enlarged on bail, considering the nature of the materials brought on record. In this view of the matter, in the interest of the applicant as well as to balance the concern expressed by respondent No.2, I feel it appropriate to request the trial Court to frame the charge/s and examine the material witnesses within a period of 8 weeks from the date this order is placed for its consideration. It is made clear that I would be inclined to pass appropriate orders on this application after 8 weeks upon considering the progress before the trial Court.

9. Stand over to 04/12/2023, high on board."

6. I am now informed that the matter is listed today for framing of charge before the trial Court. The trial is likely to take some time to conclude. Leaned APP submitted that

trial be made time bound. It is not possible to issue specific directions to the trial Court to expedite the trial considering the number of cases the trial Court is required to deal with. This Court can only make a request to the trial Court to consider expediting the trial if possible depending on its work load. The applicant cannot be incarcerated any further considering that he is in custody as an under-trial for more than four years and five months.

7. Learned counsel for the applicant, on instructions, submitted that the applicant is willing to reside outside the areas of Mumbai/Mumbai Suburban District, Thane District and Palghar District till the trial concludes. Moreover, it is submitted that even the applicant's parents are willing to reside outside these districts as it is the grievance of the informant that the parents of the applicant are threatening the witnesses.

8. Considering the nature of the matter, I propose to list the matter after twelve (12) weeks under the caption 'for compliance'.

9. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported

against the applicant. The applicant does not appear to be a flight risk. The applicant can be enlarged on bail by imposing conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Osama Taj Mohd. Shaikh in connection with C.R. No.126/2019 registered with Aarey Police Station. shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant shall not enter the areas of Mumbai/Mumbai Suburban District, Thane District and Palghar District on being released on bail except for attending the dates fixed by the trial Court and reporting to the investigating officer if called.
- (d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer while residing outside Mumbai/Mumbai Suburban District, Thane District and Palghar District and shall keep him updated, in case there is any change.
- (e) The applicant shall report to the nearest police station close to his residence while staying outside Mumbai/Mumbai Suburban District, Thane District and Palghar District, once in a week i.e. every Sunday between 11.00 a.m. and 1.00 p.m. till the trial concludes. The details thereof be furnished to the Investigating Officer.
- (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) The applicant shall attend the trial regularly. The

applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

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

(i) If the application is made by the informant/witnesses for protection under the said Scheme, 2018, the same shall be considered on its own merits by the competent authority.

(j) The applicant or his parents are put to a strict notice that if they are found threatening any of the witnesses or the informant, that may be a ground for cancellation of this bail.

(k) The applicant's parents not to enter the jurisdiction of Mumbai/Mumbai Suburban District & Palghar District till the trial concludes.

10. Stand over to 6/2/2024, under the caption 'for compliance'.

11. Liberty to the informant to apply in case of difficulty.

12. I express my gratitude for the able assistance rendered by advocate Mr. Aadesh Kondedeshmukh representing the respondent no.2. His engagement be regularised by the Legal Services Authority.

(M. S. KARNIK, J.)