

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

BAIL APPLICATION NO. 346 OF 2023

Salman Razzaq @ Razzaq Khan

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Ms. Ratna Jaiswal for the Applicant.

Mr. Veerdhaval Kakade, Advocate appointed for Respondent No.2.

Mr. S.V.Gavand, APP for the State.

Mr. Sunil Sonawane from Charkop P. Stn.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 21st JULY, 2023.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid Applicant, in Special Case No. 40 of 2022 (POCSO) , pending on the file of POCSO Special Court, at Dindoshi. The said case arises from Crime No. 677 of 2021 registered with Charkop Police Station for the offences under section 363(A), 376(2)(n), 504, 506 of the Indian Penal Code, and Section 4, 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act.

PRASANNA
PRADEEP
SALGAONKAR

2. Heard learned Counsel for the Applicant and learned APP for

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PRASANNA PRADEEP
SALGAONKAR

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the State. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by the father of the victim. The facts narrated in the FIR prima facie reveal that on 21.09.2021, the girl-child of 15 years and 7 months of age had not returned from school. She could not be traced and hence missing report was lodged. Initially crime was registered under Section 363 against an unknown person. Subsequently, the applicant and the victim were traced, and pursuant to the statement of the victim offence under Section 376 of IPC and offences under POCSO came to be registered.

4. The statement of the victim prima facie reveals that the applicant was her neighbor and was known to her. They would meet and talk to each other on phone. She has alleged that on 20.9.2021 the applicant took her to his house and had sexual relationship with her. On the next day her brother and father caught her talking with the applicant, shouted at her for talking with the applicant and assaulted her. She states that she left the house

and went towards Ganesh Mandir at Sector 4, Charkop. The applicant came to the said place with auto and they proceeded towards Bandra station. They spent the night at Bandra Station, and later stayed at Band stand for 20 days. Thereafter they proceeded to Delhi and stayed in Delhi for 20 days. She later accompanied the applicant to his native place at Uttar Pradesh and they stayed in a rental house.

5. It is true that the victim is a child within the meaning of Section 2(d) of the POCSO Act. Nevertheless, her statement prima indicates that she had voluntarily accompanied the applicant and stayed with him initially at Bandra, later in Delhi and then accompanied him to UP. Considering this fact, and also the fact that the applicant is himself a young boy and is in custody since 21.11.2021, and that charge is not yet famed, and there is no possibility of the trial commencing soon, in my considered view, this is a fit case to exercise discretion under Section 439 of Cr.P.C. Hence, the order:-

(i) The Applicant who is facing trial in Special Case No. 40 of 2022 (POCSO) , pending on the file of POCSO Special Court, at

Dindoshiis ordered to be released on furnishing bail bond in the sum of Rs.40,000/- (Rupees Forty Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Special Court;

(ii) The applicant shall report to the police station once in three months, on the first Monday of the month till framing of charge;

(iii) The Applicant shall attend the hearing before the Special Court on every date, unless exempted;

(iv) The Applicant shall not leave the State of Maharashtra without prior permission of the Court;

(v) The Applicant shall not interfere with the complainant or the other witnesses, or tamper with the evidence in any manner;

(vi) The Applicant shall keep the Investigating Officer informed of his permanent as well as temporary address, if any, and his contact details, and/or change of residence or mobile details from time to time.

(ANUJA PRABHUDESSAI, J.)