

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

BAIL APPLICATION NO. 475 OF 2023

Mohammed Irfan Qayyum Khan ...Applicant

vs.

The State of Maharashtra and Anr. ...Respondents

Mr.R.A.Shaikh a/w Mr.Hasan Sayed – Advocates for Applicant.
Mr.H.J.Dedhia – APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 21ST JULY 2023

P.C. :

1. Heard learned Advocate Shri.Shaikh for the Applicant and learned APP. Officer is present.

2. The incident took place in respect of a victim aged about 6 years. The Applicant is her neighbour. He used to take the victim in the campus of masjid at Thane and used to sexually assault her. This was noticed by one Irfan chacha whose statement is recorded on 15th December, 2022 (Page No.36). He heard the noise of shouting on 29th October, 2022 at 7.00 p.m., on the first floor of the hall of masjid. He noticed the victim as well as the Applicant. The Applicant has removed his cloths and he was trying to physically assault the

victim. When the witness Irfan confronted them, the Applicant ran away. For some reason or other, the witness Irfan could not narrate this incident to the family members of the victim. However, he disclosed this incident to his wife and in turn, they have disclosed this incident to the mother of the victim who is First-Informant.

3. The FIR came to be lodged on 8th November, 2022 at Wagle Estate Police Station. It is recorded under Section 354-B of Indian Penal Code, 1860 [“IPC”] and under Section 8 of the Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”].

4. The contention is raised that both these offences are not punishable with imprisonment for more than seven years and there is a delay in lodging of FIR and the Applicant is falsely implicated. He is aged about 20 years old. It is also submitted that the papers of medical examination are not part of charge-sheet.

5. Learned APP made following submissions :-

- (a) The age of the victim being 6 years of age ;
- (b) The incident happened in the premises of masjid not on the ground floor but on the first floor wherein there are no passerby.

6. When inquired about the medical examination, learned APP has shown to me the case papers mentioning that the victim was

taken to civil hospital – Thane on 8th November, 2022. However, the relatives refused to allow the doctors to medically examine the victim.

7. The reasons may be different. It may be considering the future of the victim girl or considering the nature of allegations or considering the time gap. Be that it may, there is no medical examination.

8. Considering the above facts, I think the Applicant has made out a case for bail. Hence, order :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant Mohammed Irfan Qayyum Khan be released on bail in connection with C.R. No. 260 of 2022 registered with Wagle Estate Police Station : District Thane for the offences punishable under Section 354-B of IPC and Section 8 of POCSO Act, on furnishing personal bond and surety bond of Rs.25,000/-.
- (iii) Applicant is directed to give attendance to Wagle Estate Police Station : District Thane on 28th July, 2023, 4th August and 11th August, 2023 from 10 to 12 noon.
- (iv) Applicant not to threaten the Prosecution witnesses or to allure them in any manner and to attend the trial Court punctually.

- (v) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

9. These are my prima facie observations. Let the learned trial Court need not be influenced by them.

10. Application is disposed of in the aforesaid terms.

11. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]