



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

BAIL APPLICATION NO. 520 OF 2023

ASHFAQ ANWAR SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

None for the Applicant.

Ms. Veera Shinde, APP for the State.

Adv. Saurabh Pakale for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 13, 2023

P.C. :

- 1.** None for the applicant.
- 2.** Heard learned counsel for respondent No.2 and learned APP for the State.
- 3.** This is an application for bail in respect of the offence punishable under Sections 354-D and 376(2)(n) of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) registered on 02/11/2022 vide C.R. No. 1383 of 2022 with Kasturba Marg Police Station, Mumbai.

4. The applicant is in custody since 04/11/2022. The FIR was registered by the victim 7 years post-incident. At the relevant time, the victim was 16 years of age. According to the victim, though the applicant was married, he was harassing her. Thereafter, the applicant had forcible sexual intercourse with her on several occasions. The applicant had promised to marry the victim. Later the victim realized that the applicant's promise was false.

5. Learned APP and learned counsel for respondent No.2 opposed the application and submitted that the offence is serious in nature and at the relevant time when the offence was committed the victim was minor and her consent was immaterial.

6. The investigation is complete and the charge sheet is filed. There is a delay in registering the FIR. Whether the delay is fatal or not is aspect which is to be considered at the time of trial. It is not possible for me to make any observation in that regard as the present application is for bail. Suffice it to observe that the applicant is in custody for more than 1 year with no possibility of trial concluding any

time soon. Continuation of the incarceration of the applicant will only be by way of a pre-trial punishment. The applicant does not appear to be a flight risk. In the facts and circumstances of the present case, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Ashfaq Anwar Shaikh in connection with C.R. No. 1383 of 2022 registered with Kasturba Marg 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 is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.
- (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) The applicant shall not contact, threaten or intimidate the victim.
- (f) 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.

(g) The applicant shall not enter into the jurisdiction of Borivali Police Station after being released on bail, till further orders of the trial Court. Further, the applicant shall not enter the area where the victim is residing or working, till the conclusion of the trial.

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

7. The application is disposed of.

8. I appreciate the valuable assistance rendered by Advocate Saurabh Pakale, who appeared on behalf of respondent No.2 in this proceeding. His engagement may be regularized by the Maharashtra State Legal Services Authority if he is on the panel or else he may be paid fees/honorarium quantified at Rs.5000/-.

(M. S. KARNIK, J.)