

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 861 OF 2022**

Dilip Rajendra Mishra
v/s.

... Applicant

The State of Maharashtra and anr.

.... Respondents

Mr. Maruti P. Mhavarkar for the Applicant.

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

Ms. Leena Patil for the Complainant.

Mr. Vishwas Rao, Santacruz Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 21st APRIL, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in Special Case No.1635/2021 pending on the file of learned Special Judge under POCSO Act, 2012, Greater Bombay. The said case arises from C.R.No.470/2021 registered with Santacruz Police Station, Mumbai for offences punishable under sections 363 and 377 of the Indian Penal Code.

2. Heard learned counsel for the Applicant. He states that the Applicant is falsely implicated and that the alleged incident could not have been committed in a crowded locality. He also states that there is no CCTV footage to show the involvement of the Applicant in the said crime.

3. Per contra, learned APP states that the Applicant was caught red handed while committing the said crime. The statement of the victim also shows that the Applicant herein had subjected him to unnatural sex. The medical report also corroborates the case of the prosecution.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the FIR lodged by one Rohan Rajput. The facts narrated in the FIR prima facie reveals that on 30/10/2021, at about 01:00 a.m., the first informant and his friend Sagar Singh had gone to a medical store at Andheri-Kurla Road, near Sangam Theater to purchase some medicines. They noticed one Maruti Wagon-R Car parked in the lane at M.I.D.C. Kondivita Road. They saw a boy aged about 13 to 14 years on the rear side of the vehicle, shouting for help. Finding to be suspicious, they opened the door. They saw one person inside the vehicle. They notice that the pant of the boy was removed and he was crying. When they questioned him, the boy informed that while he was going home from the garden, one person took him to the car, removed his pants and tried to insert something in his anus. The first informant has stated that they

caught the said person and handed him over to the police.

6. The victim was sent for medical examination. The medical report reveals that there were signs suggestive of recent forceful penetration of anus. The statement of the victim also prima facie indicates that the Applicant had pulled him in the car, removed his pants and tried to insert something in his anus.

7. The material on record reveals that the Applicant herein was involved in subjecting a minor boy to unnatural offence within the meaning of section 377 of IPC. Such traumatic incident seriously affects physical, emotional, psychological and mental well being of the child. The offence not only affects the victim but has serious impact on society at large. The gravity of the offence does not justify exercise of discretion under section 439 of Cr.P.C. in favour of the Applicant. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

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