

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

BAIL APPLICATION NO.724 OF 2023

Shahu Raghunath Kadu ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. A.A. Siddiquie i/b. M/s. A.A. Siddiqui and Associates for the Applicant.

Mr. S.V. Gavand, APP for Respondent-State.

Mr. Vilas Laxman Kalekar, Samtanagar Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th MARCH, 2023.

P. C. :-

1. At the outset, learned counsel for the Applicant seeks leave to amend prayer clause so as to incorporate special case number. Leave is granted. Amendment to be carried out forthwith.

2. This is an application under Section 439 of the Cr.PC. filed by the aforesaid Applicant, who is facing trial in Special Case No.428 of 2022 pending on the file of learned Special Judge under POCSO Act, Sessions Court, Borivali Division, Dindoshi, Mumbai. Said case arises from C.R. No.875 of 2022 registered with Samta Nagar Police Station, Mumbai, for the offences punishable under Sections 376 and 376-AB of the IPC and Section 6 of the Protection of Children From Sexual

Offences, Act, 2012.

3. Heard Mr. Siddiquie, learned counsel for the Applicant and Mr. S.V. Gavand, learned APP for Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The aforesaid crime was registered pursuant to the FIR lodged by the mother of the victim. A perusal of the FIR reveals that the Applicant is the neighbour of the first informant with whom they had friendly relations. The victim, who is 4 years old daughter of the first informant used to go to the house of the Applicant to play. The first informant has stated that since May-2022 the victim stopped going to the house of the Applicant. She saw some changes in her behaviour. About 8 days prior to lodging of the complaint, she saw the Applicant No.2 on the road and while she was talking to the Applicant, the victim got scared and said that she would not tell her mother about the incident. When the first informant enquired with the victim as to why she had stated so, the victim got scared and later told her that once when she had gone to the house of the Applicant, he had made her sit on his lap and put his hand in her nicker and inserted his finger in her vagina. The statement of the victim also prima facie corroborates the

statement of the first informant.

5. Learned counsel for the Applicant submits that the first informant has not given consent to get her daughter's medical examination, as a consequence the prosecution case is not supported by medical evidence. Suffice it to say that medical evidence is not substantive evidence. The statement of the mother and the victim which prima faice proves the involvement of the Applicant in the crime cannot be discarded at this stage.

6. Learned counsel for the Applicant has raised a plea of false implication in view of the strained relationship. There is nothing on record to indicate that the Applicant at any point of time had lodged any complaint against the first informant or that there is any dispute between the Applicant and the first informant. Hence, the contention of the Applicant that he has been falsely implicated due to the previous enmity cannot be accepted.

7. Considering the gravity of the offence, in my considered view this is not a fit case to exercise discretion under Section 439 of the Cr.P.C. Under the circumstances, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)