

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1015 OF 2022**

Mohammad Farukh Abdul
Rehman Kotwal

..Applicant

vs.

State of Maharashtra and Anr.

...Respondents

Mr.Abdul Wahab Shaikh i/b. Mr.Mohammed Umar Kazi – Advocate
for Applicant.

Mr.H.J.Dedhia – APP for the Respondent No.1 – State.

Mr.Sarthak P. Shetty i/b. Mr.Ravishankar Dwivedi – Advocate for
Respondent No.2.

CORAM : S. M. MODAK, J.

DATED : 7TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant-Accused, learned Advocate for First-Informant and learned APP for Respondent-State.
2. This Court on 27th February, 2023 was pleased to adjourn the matter by observing that let the evidence of victim be recorded. Thereafter, it was recorded on 29th March, 2023. Copy of the deposition is annexed. It is marked as Annexure-X. The offence is under Sections 376-AB, 506 of Indian Penal Code, 1860 [“IPC”] and under Sections 3(b) read with 4, 7 read with 8, 9(i), 9(j), 9(l), 9(m), 9(n), 9(p) read with 10, 11 and 12 of Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”].

3. The Applicant is a relative of the victim. The First-Informant is the sister of the victim. An FIR is dated 12th October, 2021. Whereas, duration of the incident is from 18th March, 2014 upto 14th June, 2014. The incident took place in the house of one Nafeesa Maiddin. She is the grandmother of victim. It is a matter of record that FIR is lodged after almost 7 years. If there is an offence under IPC, certainly it can be said to be fatal to the Prosecution but offences under the POCSO Act stand on different pedestal than the offence under IPC.

4. At this stage, I am restraining myself to make any comment on what will be the effect of delay on the Prosecution case. It is particularly for the reason that the victim has already given deposition and the trial is going on. The trial Court will be in a best position to appreciate the evidence at the time of conclusion of trial.

5. Learned APP submitted that let the trial be expedited. Whereas, according to learned Advocate for the Applicant, her relatives were very much there in the room. For that purpose, statement of the victim was read over. Even the Police have drawn a map about the place of incident. The house consists of various rooms.

6. It is true that the Investigating Agency has taken utmost care

while collecting the materials. That is why, the opinion from JJ Hospital was also called. The said opinion is on Page No.58. The impression gathered by the doctors is reproduced below :-

- “1) No active psychopathology in present and in past
- 2) She can narrate the events in age appropriate manner.”

7. It is also pointed out that the maximum punishment is of twenty years and if the Applicant is released on bail, there is every possibility that he will abscond.

8. The purpose of recording of evidence of victim is to see that her evidence is not tampered. From the tenor of her deposition, it reveals that she has narrated the facts which she has stated before the Police. The answers given during cross-examination can be brought to the notice of learned Judge when he will appreciate the evidence. If there are certain lacunae in her evidence, those can also be pointed out. But the fact remains that the testimony of the victim is recorded. Still there are other witnesses.

9. I am inclined to grant bail for the reason that he is remained behind bar for almost one and half years. Furthermore, he is a senior citizen. The Court seized of the matter is having huge pendency including that of *under trial prisoners*.

10. Let there can be conditions put on the Applicant so that he will

face the remaining trial. Hence, following order :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant Mohammad Farukh Abdul Rehman Kotwal be released on bail in connection with C.R. No. 368 of 2021 registered with Bazarpeth Police Station – Thane on furnishing personal bond and surety bond of Rs.50,000/-.
- (iii) Applicant is directed to give attendance to Bazarpeth Police Station – Thane on first Monday of every month from 10.00 to 12.00 noon.
- (iv) He is directed not to leave the territorial limits of Kalyan Taluka until conclusion of the trial..
- (v) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
- (vi) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled subject to notice.

11. These are my prima facie observations. Let the learned trial Court need not be influenced by them. Let the trial be completed as early as possible. Copy of this order by sent to him.

12. Application is disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]