

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

BAIL APPLICATION NO. 997 OF 2022

Imran Iqbal Shaikh

... Applicant

v/s.

The State of Maharashtra and anr.

.... Respondents

Mr. Sunny Aaron Waskar, Ms. Harshada Morey and

Mr. Shamish Marwadi for the Applicant.

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

Mr. Veerdhawal Deshmukh, appointed by Court for R.No.2.

Mr. Vilas Tambe, PSI, Dindoshi Police Station, Mumbai present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 26th APRIL, 2023.

P. C. :-

. This is an Application under section 439 of Cr.P.C. filed by the aforesaid Applicant who is facing trial in Special Case No.148/2021 pending on the the file of learned Special Judge under POCSO Act, Borivali (Div.), Dindoshi, Goregaon, Mumbai. The said case arises from C.R.No.06/2021 registered with Dindoshi Police Station, Mumbai for offences punishable under sections 363, 376 of the Indian Penal Code and section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Intervenor. I have perused the

records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by the mother of the victim. The FIR reveals that the victim had left the house on 27/12/2020 and had not returned. The first informant suspected that some persons were involved in kidnapping her daughter. Hence, crime came to be registered for offences punishable under sections 363 and 367 of the Indian Penal Code. Subsequently, the victim was traced. Her statement reveals that she had left the house on 27/12/2020. She stayed with her friend for two to three days. Since she had left the house without informing her parents, she was scared to return home. She did not return home and she claims that during day time she roamed around the place near her house and she slept in a rickshaw at night. She claims that on 29/12/2020, while she was sleeping in a rickshaw, the Applicant called her to the terrace of SRA building near Kodarmal Masjid and had forcible sexual relationship with her. She claims that on 07/01/2021, the Applicant once again had sexual relationship with her.

4. It is true that the victim is a child within the meaning of section

2(d) of the POCSO Act. The Applicant was also a young boy of 22 years of age at the time of the incident. The statement of the first informant prima facie indicates that the relationship was consensual. It needs to be noted that the POCSO Act has been enacted to protect children from offences of sexual assault, sexual harassment etc., and contains stringent penal provisions as to safeguard the interest and the well being of the children. The object is certainly not to punish minors in romantic or consensual relationship and brand them as criminals.

5. The Applicant is in custody since 17/02/2021. The trial has not yet commenced and considering the large pendency, the trial is not likely to commence in immediate future. Detaining the Applicant further will bring him in association with hardened criminals which will also be detrimental to his interest.

6. Considering the above facts and circumstances, this is a fit case for grant of bail. Hence, the Application is allowed on the following terms and conditions :-

- (i) The Applicant who is facing trial in Special Case No.148/2021 pending on the file of learned Special Judge under POCSO Act, Borivali (Div.), Dindoshi, Goregaon,

Mumbai arising out of C.R.No.06/2021 registered with Dindoshi Police Station, Mumbai, is ordered to be released on cash bail in the sum of Rs.30,000/- for a period of four weeks ;

- (ii) The Applicant shall, within the said period of four weeks, furnish P.R. bonds in the sum of Rs.30,000/- with one or two solvent sureties in the like amount ;
- (iii) The Applicant shall report to Dindoshi Police Station, Mumbai once in two months on the 1st Monday of the month between 11.00 a.m. to 02.00 p.m. until further orders;
- (iv) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (v) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(vi) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

7. Bail Application stands disposed of in above terms.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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PREETI H JAYANI
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