

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

BAIL APPLICATION NO. 1019 OF 2022

Mohammed Gauspash Abdul
Samad Shaikh

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Viral Rathod a/w. Saima Sathe for the Applicant.

Mr. Shrikant Yadav, APP for the State.

Ms. Druti Kapadia, Advocate appointed for Respondent No.2.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 16th MARCH, 2023.**

P.C.

1. This is an application for bail filed under Section 439 Cr.P.C. by the aforesaid Applicant, who is facing trial in POCSO Special Case No.234 of 2021 pending on the file of Special Judge under POCSO Act, Sessions Court, Dindoshi, Mumbai for offences under Section 4, 6, 8 and 10 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 victim-Respondent No.2. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

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3. The FIR was lodged by the Counselor at Snehasadan Sanstha. A perusal of the FIR prima facie reveals that the victim had run away from her home and was housed in Snehasadan. The first informant had stated that on 07.01.2021, the victim informed her that her uncle, his son-in-law (the applicant) and her boy friend had sexually abused her. On the basis of the information given by the victim, the Counselor lodged the FIR pursuant to which C.R.No. 15 of 2021 came to be registered against the Applicant and the other co-accused before M.I.D.C. Police Station.

4. The victim claims that she was repeatedly raped by her uncle, his son-in-law i.e. the Applicant herein, and her boyfriend. The victim was referred for medical examination. The medical examination reveals that the hymen was intact and that the victim had not suffered injury of any nature. The medical report is not in consonance with the statement made by the victim.

5. The Applicant is in custody since 26.04.2021. Till date charge has not been framed. Considering the large pendency, there is no likelihood of the trial commencing in the immediate future. Having considered the entire material on record, in my considered

view, no case is made out to detain the Applicant in custody. The Applicant is a permanent resident of Mumbai and there are no chances of the Applicant absconding or thwarting the course of justice. Hence, the Application is allowed on the following terms and conditions:-

- (i) The Applicant Mohammed Gauspash Abdul Samad Shaikh, who is facing trial in POCSO Special Case No.234 of 2021, is ordered to be released on cash bail in the sum Rs.25,000/- (Rupees Twentyfive Thousand Only) for a period of six weeks;
- (ii) The Applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount;
- (iii) The applicant shall report to the M.I.D.C. Police Station, Mumbai on the first Monday of every month between 11.00 a.m. to 2.00 p.m. until further orders;
- (iv) The applicant shall not interfere with the victim and the other witnesses, and shall not tamper with the evidence and shall not attempt to influence or contact the witnesses, or any person

concerned with the case in any manner;

(v) The Applicant shall keep the Trial Court informed of his permanent as well as temporary address, if any, and his contact details, and/or change of residence or mobile details, if any, from time to time.

(ANUJA PRABHUDESSAI, J.)