

SA Pathan

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

BAIL APPLICATION NO.952 OF 2023

Ram Uttam Nighot ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. R. Ahmed Siddique, for the Applicant.

Mrs. Rutuja Ambekar, APP for State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 7, 2023

P.C.:

1. This is an Application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.') in connection with C.R. No.0478 of 2022 registered with the Manchar police station, Pune for offences punishable under Sections 376, 376(2)(n) of the Indian Penal Code (for short 'IPC') and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO').

2. According to the prosecution, the complainant Manisha Viju Shinde, the mother of victim Vaishnavi Viju Shinde (victim) lodged report, during 10 June 2022 to 13 June 2022 she along with her husband went to Devgaon, Igatpuri and then to Mumbai. At that time, the victim was staying at the house of their relative Nikita. Thereafter, during 20 November 2022 to 25 November 2022, the victim informed her relative Jayshree that the accused/applicant forcibly made penetrative assault upon her two times by removing

her cloths when she was staying with her in the month of June, 2022. Jayshree told the said fact to the informant on phone. Out of fear she did not talk about it to anybody earlier. On 4 December 2022, the victim called the accused/applicant by telephone and he came. At that time, the complainant was in bathroom, when she came out of bathroom, she saw the accused/applicant who was sitting near the victim and she recalled the incident done by the accused. Therefore, she lodged the complaint against the applicant with respondent police station.

3. The investigating agency recorded statement of victim and other witnesses. Medical examination report of victim is on record. After completion of investigation, the investigating agency has filed charge-sheet against the applicant.

4. Learned Advocate for the applicant submitted that there is delay in lodging report. According to him the relationship is consensual. He further submits that the charge-sheet is filed, therefore, presence of applicant is not required for custodial interrogation. He submits that the applicant is 22 years old. He, therefore, prayed for release of applicant on bail. In support of his contention, he relied the following orders/judgments of this Court:

- i) Imran Iqbal Shaikh vs The State of Maharashtra and anr., Bail Application No.997 of 2022, order dated 26 April 2023.
- ii) Faizan Wahid Baig vs The State of Maharashtra, Bail Application No.3372 of 2021, order dated 15 November 2022.
- iii) Sunil Mahadev Patil vs The State of Maharashtra, Bail Application No.1036 of 2015, order dated 3 August 2015.

5. On perusal of the charge-sheet, it appears that the birth certificate of victim is on record as per the certificate the date of birth of the victim is 3 June 2011. The date of incident was between 10 June 2022 to 13 June 2022. Prima facie it appears that the applicant was below 12 years on the date of incident. The medical certificate prima facie indicates penetrative sexual assault of the victim. According to the report, the victim was residing at the place of incident for temporary period. Based on statement of victim supported of medical evidence. Prima facie case is made against the applicant.

6. Considering the facts of the case, the trial Court is directed to decide the trial within one year from today.

7. The Bail Application, therefore, stands rejected. No costs.

(AMIT BORKAR, J.)