

Ashwini V

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

BAIL APPLICATION NO. 1081 OF 2023

Digitally
signed by
ASHWINI
JANARDAN
VALLAKATI
Date:
2023.07.05
11:30:07
+0530

Pankaj Prabhakarrao Bahekar

... Applicant

V/s.

The State of Maharashtra & Anr

... Respondents

Mr. Hitesh A. Thorat with Mr. Rahul Ramteke, for
Applicant.

Ms. Savita Prabhune, h/f Ms. Megha Bajoria, for
Respondent No.2 (Appointed as Legal Aid)

Mrs. Rutuja Ambekar, APP, for Respondent-State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 28, 2023

P.C.:

1. This is an Application under Section 439 of Criminal Procedure Code ("Cr.PC.") seeking release of Applicant on bail in connection with Crime No.1955 of 2022 registered at Chakan Police Station for the offences punishable under Sections 354B of the Indian Penal Code ("IPC") and Section 8 and 12 of Protection of Children from Sexual Offence Act, 2012 ("POCSO").

2. According to prosecution on 24th December 2022, at about 9.00 am, the victim girl aged about 5 years was playing with children in parking area of the society.

The prosecution story is as under:

“on 24/12/2022 at about 9:00 a.m., the victim girl aged about 5 years was playing with children in the parking area of the society. At about 9:30 a.m., the informant being mother of the victim girl gave a call to the victim for breakfast, but no response received. Therefore, she searched for the victim, however, did not find place in the parking area. Therefore, when she was searching the victim, thereupon found her chappals outside the door of the applicant's flat. Therefore, she gave a call to the victim as door was closed from inside. After some time, the door was opened and the victim girl was seen coming out from the bed room of the applicant's flat. On enquiry, victim girl informed that the applicant took her into the bed room and kissed her. Thereafter, applicant removed her pant and laid on her person. Therefore, the mother informed the said fact to her husband. He came to the house from his job place and asked the applicant in that regard, but the applicant gave evasive answers. Therefore, they rushed to the police station where the mother lodged the FIR on which the crime was registered and arrested the applicant immediately.”

3. The Applicant therefore filed an application under Section 439 of Cr.P.C. which came to be rejected by an order dated 16th March 2023 by learned Additional Sessions Judge, Khed-Rajgurunagar, District Pune.

4. According to learned Advocate for the Applicant, details of the incident have not been mentioned in the report. Statement of victim is recorded after two days. *The informant has made false statement.* There are no witnesses to the incident. The charges yet to be framed. Therefore, conclusion of trial would take substantial time. He therefore, prayed for release of Applicant on bail.

5. Per contra, learned APP and Advocate for the Victim submitted that the act was inside room. Sufficient details are

mentioned in the report and also in statement under Section 164 of Cr.P.C. The statement under Section 164 of Cr.P.C. at this stage plays down foundational facts to attract presumption under Section 29 of POCSO Act, therefore, the Applicant is not entitled to be released on bail.

6. On perusal of the statement of victim under Section 164 of Cr.P.C., *prima facie* it appears that the incident described in the said statement may *prima facie* amount to sexual assault within meaning of Section 7 of the POCSO Act. The Applicant is aged about 42 years. The victim is of 5 years. In so far as reason for false implication, it is submitted that the Applicant failed to increase fees for day care service rendered by informant's mother and consequential refusal by the Applicant. In my opinion at this stage, it is not a circumstance sufficient to draw inference to false implication. The other material on record including statements of parents in fact support the case of prosecution. The documents in the form of certificate of birth *prima facie* supports that the victim was three years old at the date of incident. Therefore considering the material on record, the prosecution has made out a case against Applicant.

7. Hence, the Bail Application is rejected.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 4th July 2023 to carry out corrections in paragraph 4. The corrections are shown in italicize.