

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

BAIL APPLICATION NO.2052 OF 2021

Saishwar Vijay Sale ...Applicant

Versus

The State of Maharashtra ...Respondent

...

Mr. Kalam Shaikh i/b. Ms Sana Shaikh for the Applicant.

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

Mr. Savio D'cruz for the Intervenor.

Mr. Prakash Shirdhankar, PSI, Andheri Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 9th AUGUST, 2023.

P. C. :-

1. This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in POCSO Special Case No.428 of 2019, pending on the file learned Special Judge, Court No.11, Sessions Court at Dindoshi, Borivali Division. The said case arises from Crime No.516 of 2019 registered with Andheri Police Station, Mumbai for the offences punishable under Sections 376(d) and 328 of the IPC and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Kalam Shaikh, learned counsel for the Applicant,

Mr. Savio D'cruz, learned counsel for the Intervenor and Mr. S.V. Gavand, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The FIR lodged by the victim prima facie reveals that the co-accused Junaid had taken her to one room under the pretext that he had her objectionable photographs. It is stated that some other boys were present in the said room. They gave her some drink, which was laced with intoxicant. She was unconscious after drinking the said brown colour drink. She states that thereafter said Junaid and all his associates sexually abused her.

4. The records reveal that the victim was pregnant. The birth certificate of the victim shows her birth date as 17/02/2003. It is thus evident that the victim was 16 years and five months of age as on the date she delivered the child. The DNA report reveals that the victim and the Applicant herein are the biological parents of the child. Thus, the material on record prima facie shows involvement of the Applicant in commission of the crime.

5. Considering the gravity of the offence, in my considered view this is not a fit case to exercise discretion under Section 439 of the Cr.P.C. Hence, the application is dismissed.

6. It is stated that the Applicant is in custody since long. Learned Special Judge to endeavour to dispose of the case as expeditiously as possible.

(SMT. ANUJA PRABHUDESSAI, J.)