

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

BAIL APPLICATION NO. 1518 OF 2022

Rasool Millat Hussain Khan ..Applicant
VS.
State of Maharashtra and Anr. ..Respondents

Adv. Rammani G. Upadhyay for the Applicant.

Ms. Priyanka B. Chavan for the Respondent no. 2.

Mr. S. H. Yadav, APP for the State.

R.A. Patil, PSI, Tulinj Police Station.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 27, 2023

P.C. :

- 1.** Heard learned counsel for the parties and learned APP for the State.
- 2.** This is an application for bail by the applicant- Rasool Millat Hussain Khan in connection with C.R. No.818 of 2018 dated 28/12/2018, registered with Tulinj Police Station, under sections 376(1)(2)(f)(n), 506 and 34 of the Indian Penal Code, 1860 read with sections 4, 8, 9 and 16 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short).
- 3.** At the outset it needs to be noted that the applicant was arrested on 13/08/2018 and is in custody for more than

4 ½ years. The investigation is complete and the charge-sheet has been filed. Even the charge is not framed. The trial is not likely to conclude any time soon.

4. So far as the accusations are concerned, the victim is the daughter of the applicant. At the time of the filing of the FIR the victim was 16 years of age. The accusations are less than 4 days after the death of her mother on 18/08/2016, the applicant had forcible sexual intercourse with the victim, his daughter, on 22/08/2016. Thereafter, sometime in January 2017, the applicant married a second time. It is alleged that the applicant's second wife i.e. the victim's stepmother helped and assured the applicant in abusing the victim sexually. It is then alleged that the applicant forced the victim to have physical relations with one of his acquaintance i.e. co-accused Akbar. The applicant took money from Akbar after every act that he had with the victim. The applicant insisted the victim marry Akbar.

5. Akbar took victim at his home, where it is alleged that Akbar again committed forcible sexual intercourse with her. The complainant somehow managed to escape from Akbar's home.

6. In the medical history reported by the victim reveals that apart from her father, the victim was sexually abused

by Akbar and one Imran. Imran is not named as a co-accused. It is pointed out that the victim is now married and residing outside Mumbai and Thane district.

7. I do not wish to comment on the merits of the contentions raised by learned counsel for the applicant as it may influence the trial. There are no criminal antecedents reported against the applicant. The applicant is in custody for more than 4 ½ years without any possibility of the trial concluding any time soon. The applicant will face the consequences post-trial if he is found guilty of the offence. Considering the totality of the circumstances, in my opinion, the applicant can be released on bail by imposing some stringent conditions. Hence, the following order.

ORDER

(a) Applicant- Rasool Millat Hussain Khan in connection with C.R. No.818 of 2018, registered with Tulinj Police Station, shall be released on bail, on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount;

(b) The applicant shall not establish any contact with the victim;

(c) The applicant shall seek prior permission of the trial Court before leaving the jurisdiction of the Mumbai, Mumbai Suburban, Thane and Palghar districts;

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence;

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The trial Court is requested to record the evidence of the child witness in terms of section 35 of the POCSO Act expeditiously. The copy of this order be placed on record before the trial Court.

8. The application is disposed of.

9. I appreciate the assistance rendered by Adv. Priyanka B. Chavan who appeared on behalf of respondent no. 2 in these proceedings to assist this Court.

(M. S. KARNIK, J.)