

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

**BAIL APPLICATION NO.4155/2021
(THROUGH JAIL)**

BABURAM KASHI SHARMA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Rahul Kasbekar for the applicant.

Ms. P. N. Dabholkar, APP for State.

Adv. Payal Vardhan for the complainant.

Dr. Deepak Hinde, PSI, MHB Colony Police Station, Borivali (W).

CORAM : M. S. KARNIK, J.

DATE : MARCH 1, 2023..

P.C. :

1. Heard learned counsel for the applicant and learned APP.

2. This is an application for bail through jail in respect of the offence punishable under Sections 363, 341, 376 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4, 8, 10, 12 of the of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'the POCSO Act' for short) registered vide First Information Report (FIR) No.57/2016 with M. H. B. Colony Police Station.

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3. The applicant was arrested on February 26, 2016. The applicant now is in custody for seven years. The investigation is complete and the charge-sheet has been filed.

4. Learned counsel for the applicant submits that portal reveals that the matter is now listed before the trial Court on March 8, 2023 for framing of charge. The trial, therefore, will take a long time to conclude. This is a case of long incarceration of the application. However, the accusations need to be noticed which are serious.

5. The victim at the relevant time was three years of age. The complaint is filed by the mother of the victim. It is alleged that the applicant was the complainant's neighbour. He took the victim to his house. The victim came home crying. The mother noticed semen stains on the victim.

6. So far as the medical evidence is concerned, it does not support the complainant's version to suggest that there was penetrative sexual assault on the victim. The complainant has stated that after the incident the victim was washed and even her clothes were changed.

7. The applicant is in custody as an under-trial prisoner

for seven years. Further incarceration will only be by way of punishment pending the trial. The applicant will face the consequences if he is found guilty after the trial is concluded. Considering the length of custody the applicant has undergone, the applicant is enlarged on bail. No criminal antecedents are reported. Hence the following order.

ORDER

- (a) The application is allowed.
- (b) The applicant in connection with FIR No.57/2016 with M. H. B. Colony 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.
- (c) The applicant to attend the trial regularly.
- (d) The applicant shall report to the Investigating Officer of the concerned police station once in a month on every Monday, between 11.00 a.m. and 1.00 p.m.
- (e) The applicant shall not enter the area of M. H. B.Colony till the trial is over, except for the purpose of attending the investigating officer.
- (f) 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.

(g) 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.

(h) The applicant shall not leave the area of Mumbai/ Mumbai Suburban District till the trial is over without the leave of the trial Court.

8. The application is disposed of.

9. I express my gratitude for the able assistance rendered by learned counsel Ms. Payal Vardhan who appeared on behalf of the complainant and argued in support of the complainant's case.

10. This order be communicated to the applicant through Jail Authorities.

(M. S. KARNIK, J.)