

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

CRIMINAL BAIL APPLICATION NO. 2444 OF 2021

Tanaji Daulat Bhagat

...Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

**NILAM
SANTOSH
KAMBLE**

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NILAM SANTOSH
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Date: 2023.08.25
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Mr.Vaibhav Gaikwad, for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent No.1 -State.

Ms.Komal Sinha, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th AUGUST 2023

P.C:-

. By this Application, the Applicant is seeking bail in Crime No.38 of 2020 registered on 27th January 2020 for offence punishable under Sections 376, 354(A), 511 of the IPC and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

2. It is prosecution case that complainant is mother of victim. On 26th January 2020 at 11.00 a.m. her daughter went outside home and did not return, then she was taking search of her, with her another daughter. While searching her daughter she

was told by her daughter Pooja that victim is in the house of the Applicant. Therefore, she along with her other daughter proceeded towards the house of the Applicant, that door of room was locked from inside. Then, Complainant called victim by taking her name three to four times. The Complainant saw from key-hole, that the Applicant was in his house there were no clothes on his body then she started to knock the door, at that time, complainant, saw that Applicant was wearing underwear. Thereafter, the Applicant opened the door. The victim was inside the house of the Applicant. She took victim to home. Thereafter, she asked the victim what the Applicant did with her. That time victim told the Complainant and her husband, that when victim was playing at that time the Applicant called her in his house, he removed all her clothes and slept on her stomach. Thereafter, Complainant lodged police complaint against the Applicant.

3. It is contention of the learned counsel for the Applicant that, there was no medical examination of the victim, the offence is under Section 376 of the Indian Penal Code is wrongly applied against the Applicant. As there is no allegations of sexual assault against the Applicant. There is delay of one day to lodge the FIR. The Applicant is suffering from leprosy, he does not have fingers on his both hands. He is behind the bar more than three years. Hence, he be released on bail and Application be allowed.

4. The learned APP strongly objected to allow the Application on the ground that, the Complainant saw the incident from the key hole of the door of the house of the Applicant. Complainant took the victim from the house of Applicant. There is *prima facie* case, the Applicant is the resident of the same village. If he released on bail, he may influence the witnesses. The learned APP further submitted that, charge is framed in the year 2021 and witnesses have been examined. If the Applicant is released on bail, trial will be delayed. Hence, requested to dismiss the Application.

5. The learned counsel for Respondent No.2 reiterates the submissions made by the learned APP.

6. I have heard all learned counsel.

7. Admittedly, charge is framed against the Applicant, trial has commenced some witnesses have been examined. If the Applicant is released on bail trial may be delayed. In view of the above, I pass following order.

ORDER

(i) The Application is dismissed.

(ii) The Applicant is behind the bar more than three years. The Trial Court is requested to expedite

the trial as early as possible, preferably within four months from the receipt of the order of this Court.

(SHIVKUMAR DIGE, J.)