

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

BAIL APPLICATION NO. 3849 OF 2021

Farooque Zakir Shaikh

..Applicant

v/s.

The State of Maharashtra

..Respondents

Ms. Sena Shaikh a/w. Maaya Updeshi, Mr. Pratik Thadani, Aqsa Kazi, Hemal Shah and Kulsum Shah for the Applicant.

Ms. Ameeta Kutti Krishnan, Advocate appointed for the Respondent No.2.

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

Mr. Laxmikant Salunkhe, P.I. (I.O.), J.J.Marg Police Stn.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 14th JUNE, 2023.**

P.C.

1. The Applicant is facing trial in Special POCSO Case No. 657 of 2021 pending on the file of the Special Judge (POCSO), Gr. Mumbai. The aforesaid crime arises from Crime No. 71 of 2021 registered with J.J.Marg Police Station, for offences under Section 323, 324, 342, 363, 377, 504 of the Indian Penal Code and Section 4 and 12 of Prevention of Children from Sexual Offences Act, 2012 and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015.

2. Heard learned Counsel for the Applicant, learned Counsel for the Intervenor and learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR dated 26.3.2021 lodged by the mother of the child victim. The facts narrated in the FIR prima facie reveal that on 23.3.2021 at about 11.30 a.m., four persons came to her workplace to tell her that her son was being taken for some inquiry. One of the persons gave his mobile number as 8655597595, which was switched off when she tried to contact the said person. On 25.03.2021 at about 11.00 am. she received a phone call from the same phone number informing her that her son was dropped near GTB station. She went to the GTB station and saw her son walking slowly. He informed her that the said four persons had taken him at some isolated place at Sion Koliwada and assaulted him with sticks and pipes. Her son also informed her that one of the accused persons had put grease on a beer bottle and inserted the bottle in his anus. Her son had informed her that the said persons wanted to know whereabouts of Shahabaz.

4. The statement of the victim also reveals that on 23.03.2021 at about 10.30 a.m. four unknown persons came to his house in a four wheeler. They informed his mother that they were taking him for some inquiry. One of the said persons gave his mobile number to his mother. The said four persons took him to an isolated place and questioned him about his friend Shahbaz. The victim suspected one of the persons to be Ezaz, husband of the lady who had eloped with Shahbaz, and the other three persons were his friends. They took him to a construction site at Sion Koliwada, and abused and assaulted him. The victim stated they applied greese to a beer bottle and inserted the same in his anus. They later dropped him at GTB station and informed his mother accordingly.

5. The statements of the first informant as well as the victim prima facie reveal that the said four persons were not known to them. They only suspected one of the persons to be Ezaz, husband of the lady who had eloped with Shahbaz. It was therefore necessary for the Investigating Officer to establish the identity of the four persons involved in the crime.

6. It is to be noted that no test identification parade was held ,

yet the Applicants were arrested and the chargesheet was filed without establishing their identity in any manner. In the absence of prima facie material to prove identity or complicity of the Applicant in commission of the said crime, this court is left with no other option, but to release him on bail.

7. It is pertinent to note that the Investigating Officer who was present before the Court was unable to offer any explanation for not conducting the test identification parade. By order dated 14.03.2023, he was directed to file an affidavit in this regard. Subsequent to this order, the Investigating Officer sprang into action and vide letter dated 16.03.2022 requested the Executive Magistrate to conduct the identification parade. Accordingly, the test identification parade was conducted on 17.03.2023, that is almost two years after the date of the first information report.

8. The Investigating Officer has filed an affidavit wherein he has only tendered his apology for not conducting the Identification parade in time. No explanation whatsoever has been offered for filing the chargesheet against the Applicant without even establishing his identity or complicity in the crime. It is pertinent to note that the victim, who was a boy of 15 years of age, had alleged that four unknown persons had taken him to some isolated

place at Sion Koliwadi and inserted a beer bottle in his anus. The offence committed against the child was of serious nature. The Investigating Officers was therefore required to conduct the investigation in all its seriousness. Instead, it appears that the Investigating Officer has filed the chargesheet in a haphazard manner, without even trying to establish the identity of the said persons. The manner in which the investigation has been conducted reflects total insensitivity, if not inefficiency of the Investigating Officer.

9. It is pertinent to note that the POCSO Act has been enacted with an object to protect the children from wide ranging sexual offences in varying forms. Timely and thorough investigation and effective prosecution is crucial for effective implementation of this special legislation. It therefore goes without saying that shoddy and sham investigation, as in the present case, will render the special legislation an illusion, offering no hope to the victim of the crime. Furthermore, an accused is also entitled to a fair investigation. It therefore follows that shoddy investigation is violative of the right to a fair investigation guaranteed to an accused person under Article 21 of the Constitution of India. Hence, such

lapse on the part of the Investigating Officer needs to be viewed seriously and corrective measures are required to be taken to ensure that such casual and insensitive approach does not defeat the object of the Act.

10. Hence, the following order is passed:-

(i) The Applicant who is facing trial in Special Case No. 657 of 2021 pending on the file of the Special Judge (POCSO), Gr. Mumbai, arising from Crime No. 71 of 2021 registered with J.J.Marg Police Station, is ordered to be released on cash bail in the sum of Rs.35,000/- (Rupees Thirtyfive Thousand Only) for a period of three weeks;

ii) The Applicant shall within the said period of three weeks furnish bail bond of Rs.35,000/- (Rupees Thirtyfive Thousand Only) with one or two solvent sureties in the like amount;

(iii) The Applicant shall not visit the area of Bhendi Bazaar, within the jurisdiction of J.J.Marg Police Station wherein the victim and his family are residing, unless required by the Investigating Officer;

(iv) The Applicant shall not interfere with the complainant or the other witnesses, or tamper with the evidence in any manner;

(v) The Applicant shall keep the Investigating Officer informed of his permanent as well as temporary address, and his contact details, and/or change of residence or mobile details from time to time.

11. A copy of this order be forwarded to the ACP, Dongri Division, who shall take note of the observations made in this order as regards shoddy investigation conducted by the Investigating Officer Laxman Salunkhe, and make necessary entry in his service record in this regard.

12. A copy of this order shall also be forwarded to the Commissioner of Police to take corrective measures in this regard, by conducting workshops and sensitizing the Investigating Officers about nuances of the POCSO Act, and the procedure to be followed while investigating POCSO cases.

(ANUJA PRABHUDESSAI, J.)