



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

BAIL APPLICATION NO. 2444 OF 2023

BHAGAWATI PRASAD SHARMA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Mr. Niranjan Mundargi i/b Ms. Keral Mehta i/b A. Karim Pathan, for the Applicant.

Ms. Rutuja Ambekar, APP for the State.

Ms. Anushree Koparkar, for Respondent No. 2.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 31, 2023

P.C. :

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

2. This is an application for bail in respect of the offence punishable under section 354-A of the Indian Penal Code ('IPC' for short), under sections 7, 11(1) of the Protection of Children from Sexual Offences Act, 2012 ('POCSO', for short) registered on 18/02/2023 vide C.R. No. 94 of 2023 with Vimantal (Airport) police station, District- Pune. Later on, charges under sections 8, 10 and 12 of the POCSO Act were added. The applicant was arrested on 20/02/2023.

3. It is the case of the prosecution that the victim when

she was studying in VIII th standard, the applicant who was working as a 'Work Experience Teacher' committed an act which is an offence punishable under the aforesaid sections. The FIR was registered on 18/02/2023 after 4 years of the incident. This FIR was registered after one of the teacher working in the school had a quarrel with the applicant as the teacher alleged that the applicant had inappropriately touched her. An enquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short 'POSH') was initiated against the applicant. The applicant was suspended from service. The application was opposed by learned APP as well as learned counsel appearing for the victim.

4. The applicant was arrested on 20/02/2023 and now in custody for more than 8 months. The investigating is complete. The charge-sheet has been filed. The applicant will face the consequences of the trial if he is found guilty. In my opinion, further custody will only be by way of a pre-trial punishment considering that maximum punishment for the offence alleged is 7 years imprisonment. No doubt, if the offence under section 10 of POCSO Act is established

against the applicant, minimum sentence prescribed is 5 years imprisonment. As indicated earlier, the applicant will face the consequences post trial but he need not be detained by way of a pre-trial punishment, considering that he has undergone incarceration as an undertrial for more than 10 months with no possibility of trial concluding any time soon as even the charge has not been framed so far. The apprehension expressed by learned APP and learned counsel for the respondent no. 2 that the applicant may tamper with the witnesses can be taken care of by imposing stringent conditions. The victim is residing in Pune. Learned counsel for the applicant on instructions stated that the applicant undertakes to reside outside Pune district during the pendency of the trial. There are no criminal antecedents reported against the applicant. I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.

- (b) The applicant-Bhagawati Prasad Sharma in connection with C.R. No.94 of 2023 registered with Vimantal (Airport) police station, Pune shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties

in the like amount.

(c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall attend the investigating officer of Vimantal (Airport) police station, Pune once in two months on first Monday of every alternate month between 11.00 a.m. and 1.00 p.m. commencing from November 2023.

(e) 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.

(f) 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.

(g) Except for attending the trial and for the purpose of reporting to the investigating officer or for the purpose of POSH enquiry or any other departmental enquiry, the applicant shall not enter the Pune District after being released on bail, till the trial concludes.

(h) The applicant shall not make any attempt to contact the victim.

(i) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(j) The applicant shall surrender his passport, if any, to the investigating officer.

5. The application is disposed of.

6. I appreciate the valuable assistance rendered by Ms. Anushree Koparkar, the learned Advocate, who appeared on behalf of respondent No.2 in this proceeding. Learned advocate may be paid the fees as prescribed by the Legal Aid Services Authority or if not prescribed, the same is quantified at Rs.5000/-.

(M. S. KARNIK, J.)