

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

**BAIL APPLICATION NO. 2957 OF 2022**

|                                 |               |
|---------------------------------|---------------|
| Saba Naaz Mustaque Ahmed Shaikh | ...Applicant  |
| vs.                             |               |
| The State of Maharashtra        | ...Respondent |

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Mr. Shaikh Shahzad - Advocate for the Applicant  
Rahil A. Siddiqui (Appointed legal aid a/w Adv. Asmita Maurya and  
Adv. Huma A. Shaikh) -Advocate for Respondent No. 2.  
Mr. H. J. Dedhia - APP for the Respondent-State

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**CORAM :            S. M. MODAK, J.**

**DATE :             28<sup>th</sup> JULY, 2023**

**P. C. :-**

1.            Heard learned Advocate for the Applicant and learned Advocate for the first informant and learned APP. Officer from Mumbra Police station is present.
2.            The present Applicant is accused No. 1 and allegation is that she has kidnapped the victim who is 14 years old on 19/09/2021. Both of them were residing in the same building in the Hasmat Chowk Devaripada, Shrilanka at Mumbra. The victim left the house on 19/09/2021 at about 04.00 p.m. She was angry as her mother-first informant-Sitar Shaikh has not allowed her to use

mobile handset. She has not returned home. On apprehending that some one must have kidnapped her, offence is registered on 21/09/2021 under Sections 363, 354, 109, 504, 506 read with 34 of the Indian Penal Code against unknown person. The victim returned home on 24/09/2021 and narrated the entire incident to her mother. Police recorded her statement on 25/09/2021 and present Applicant came to be arrested.

3. Whereas accused-Asif is not traceable and accused-Tausif is discharged on the basis of the statement of the victim given under Section 164 of the Criminal Procedure Code. Subsequently Police have added under Sections 8 and 12 of the Protection of Children from Sexual Offences Act and under Sections 363, 354, 109, 504 and 506 read with 34 of the Indian Penal Code.

4. The sum and substance of the contents of the statement of the victim is that she went alongwith present Applicant and they travelled from Mumbra to Govandi, Navi Mumbai and then again to Mumbra Railway station, then to Thane and then again Mumbra and Govandi then to Vashi. The present Applicant has hired two rooms in one Maharaja Hotel. The present Applicant and wanted accused-Asif stayed in one room. Whereas Applicant was desirous that the victim

should stay in adjoining room alongiwth Tausif who is discharged subsequently.

5. In her statement under Section 161, she has levelled allegation of sexual abuse by said Tausif. However when she gave her statement under Section 164 of the Criminal Procedure Code, she has exonerated Tausif and in fact implicated name of the wanted accused-Asif. Further allegation against the present Applicant is that when the victim tried to take help of this Applicant, instead of helping her she tried to impress upon the victim to do the act desired by accused-Tausif. So in nutshell the allegation is that it is the present Applicant who was instrumental in bringing the victim to Maharaja Hotel and thereby helped the discharged accused-Tausif and wanted accused-Asif to sexual abuse her and harass her.

6. The present Applicant is behind bar since September 2021 and it is submitted that yet charge is not framed.

7. My attention is invited to medical case papers on page no. 43. It is true that the Doctors have opined that possibility of the penetrative vaginal intercourse cannot be ruled out. Breach of hymen is noted and labia majora and labia minora were normal. It finds place at page no. 43. That is why Police have not invoked the

section dealing with Penetrative sexual assault. The offence is under Sections 8 and 12 are not punishable with life imprisonment. So I am inclined to grant bail to the Applicant. It is apprehended that if she is released on bail she will won over the victim as both are residing in the same building. Condition can be imposed. Hence Order:-

### **ORDER**

- (i) Bail application is allowed.
- (ii) Applicant-Saba Naaz Mustaque Ahmed Shaikh arrested in connection with C.R. No. 783 of 2021 in Special (POCSO) Case No. 783 of 2021 registered with Mumbra Police Station for the offence punishable under Sections Sections 363, 354, 109, 504 and 506 read with 34 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 25,000/-.
- (iii) Applicant is directed not to enter the limits of the Mumbra Police Station until completion of the trial.
- (iv) Applicant is directed to give his alternate residence address to the concerned Police Station and concerned Court.

- (v) Applicant shall not threaten the prosecution witnesses.
- (vi) The Applicant shall regularly attend the proceedings before the trial Court.
- (vii) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail after notice.

8. Learned Advocate for the first informant be paid fees as per rules.

9. It is made clear that the these are my *prima facie* observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

10. Application is disposed of in the aforesaid terms.

11. All the parties to act on an authenticated copy of this order.

**[S. M. MODAK, J.]**