



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

BAIL APPLICATION NO. 2941 OF 2023

MEHBOOB NURUDDIN SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. M.A. Khan a/w Adv. Vidhi Dugad i/b Capri Legal for the
Applicant.

Ms. Apurva Gupte for Respondent No.2.

Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 27, 2023

P.C. :

1. Heard learned counsel for the applicant, learned counsel for respondent No.2 who is appointed by this Court and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 376, 376(2), 354 and 504 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"), registered on 13/04/2022 vide C.R. No.368 of 2022 with Malwani Police Station, Mumbai.

3. The applicant is the stepfather of the victim. The statement of the victim under Section 161 of the Code of Criminal Procedure (Cr.P.C.) was recorded on 13/04/2022. As per the statement of the victim, sometime in the year 2018 when the applicant, the victim's mother and the victim were staying together at Malvani, the applicant touched the victim in a manner that constitutes an offence under the aforesaid sections. The victim had disclosed this incident to her mother. However, the complaint was lodged almost after 4 years i.e. on 13/04/2022. At the relevant time, the victim was 10 years and 11 months of age.

4. Learned APP and learned counsel for the complainant vehemently opposed the application. It is submitted that the offence is serious in nature and that if the applicant is enlarged on bail, the possibility of tampering with the evidence and threatening the complainant as well as the victim can not be ruled out.

5. Learned counsel for the applicant submitted that the applicant is the second husband of the complainant. The applicant married the complainant sometime in the year

2015 after she divorced her first husband. The applicant and the complainant, because of some differences, divorced on 07/12/2021. It is the submission of the learned counsel for the applicant that the applicant's marriage was scheduled on 06/05/2022 and after this fact came to the notice of the complainant, the present FIR came to be registered. According to the learned counsel for the applicant, this is a case of false implication. Learned counsel for the applicant, on instructions, further submits that the applicant is willing to reside outside the jurisdiction of Mumbai, Thane and Palghar districts till the conclusion of the trial.

6. Suffice to observe that the complaint is lodged after 4 years of the alleged incident and that too after the complainant divorced the applicant. The complaint is made just prior to the remarriage of the applicant. These are, *prima facie*, observations for the purpose of this application. The investigation is complete and the charge-sheet has been filed. The applicant is in custody since 13/04/2022 for a period of more than 18 months with the possibility of trial

concluding any time soon appears remote. In the facts and circumstances of the present case, I am inclined to enlarge the applicant on bail. The applicant shall face the consequences post-trial if found guilty. The apprehension of the complainant that they may be threatened can be taken care of by imposing stringent conditions, while releasing the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mehboob Nuruddin Shaikh in connection with C.R. No.368 of 2022 registered with Malwani Police Station 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 trial Court is requested to record the evidence of child witness expeditiously in terms of mandate of Section 35(1) of the POCSO Act.
- (e) Except for the purpose of attending the trial, the applicant shall not enter Mumbai/Mumbai Suburban, Thane and Palghar districts till the conclusion of the trial.
- (f) On being released on bail, the applicant shall furnish

his contact number and residential address to the Investigating Officer as well as to the trial Court while residing outside Mumbai/Mumbai Suburban, Thane and Palghar and shall keep them updated, in case there is any change.

(g) The applicant shall report to the nearest police station of the place of his residence, while residing outside Mumbai/Mumbai Suburban, Thane and Palghar, once in a month, every first Monday, of the month between 11.00 a.m. and 1.00 p.m.

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

(i) 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.

(j) The applicant shall not establish any contact with the complainant and the victim and shall not intimidate or threaten them.

(k) If it is found that any of the conditions are breached, the same shall be viewed seriously which may invite the consequence of cancellation of this bail.

7. The application is disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. I appreciate the valuable assistance rendered by Advocate Apurva Gupte, 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.)