



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

BAIL APPLICATION NO. 3414 OF 2023

SAFIQUE MOHAMMED SHAIKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Ms. Mallika Sharma i/b Ms. Anjali Patil, for the Applicant.
Ms. Vilasini Balasubramaniam, for Respondent No.2.
Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 11, 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 sections 376(2)(f), 376(2)(j), 376(2)(n) of the Indian Penal Code, 1860 and under sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 registered on 17/02/2023 vide C.R. No.65 of 2023 with Khadakpada police station. The applicant was arrested on 17/02/2023.
- 3.** The applicant is the cousin brother of the victim. The victim was staying with her aunt and her cousin brothers. The victim stated her age to be 13 years. Except for the

statement of the victim, there is nothing on record to indicate that at the relevant time, the victim was 13 years of age. The ossification test of victim conducted reveals that the victim must be of 16 to 18 years of age. The victim stated that for a period of 5 months, there were consensual relations between the applicant and the victim. It is after the aunt of the victim noticed some changes in the victim that she was taken to the doctor when it was realised that she was pregnant. The victim has undergone an abortion.

4. Learned counsel for the respondent no. 2 vehemently opposed the application. She submitted that the victim is a minor. The applicant has taken advantage of the victim who was staying with the aunt and the applicant under the same roof. It is further submitted that merely because the relation is consensual in nature, the applicant cannot claim that the applicant be enlarged on bail, considering that the victim is a minor. Her consent is immaterial.

5. Prima facie, considering the materials on record, the possibility of the victim being of an age of understanding cannot be ruled out. The applicant was arrested on 17/02/2023. The applicant was 23 years of age at the

relevant time. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. Taking an overall view of the matter and as the trial is likely to take a long time to conclude, I am inclined to enlarge the applicant on bail. The victim is presently in the custody of the Government Special Rehabilitation Home for Girls, Ulhasnagar. In the facts and circumstances of the case, I am inclined to enlarged the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Shafique Mohammed Shaikh in connection with C.R. No. 65 of 2023 registered with Khadakpada police station shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 15,000/- for a period of 6 weeks in lieu of surety.
- (d) 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.

(e) 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.

(f) The applicant shall make himself available for trial on all the dates. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) The applicant or his family members shall not threaten, intimidate or contact the victim.

6. The application is disposed of.

7. I appreciate the valuable assistance rendered by Ms.Vilasini Balasubramaniam, who appeared on behalf of respondent No.2 in this proceeding. Her engagement may be regularized by the Maharashtra State Legal Services Authority.

(M. S. KARNIK, J.)