

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO. 1238/2022

(REHMAN KHAN YUSUF KHAN **VERSUS** STATE OF MAHARASHTRA, THR. PSO, PS KHAMGAON CITY,
DISTRICT BULDANA & ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri U.J. Deshpande, counsel for the applicant.
Shri A.M. Kadukar, Additional Public Prosecutor for the non-applicant no.1.
Ms Mohini A. Sharma, counsel for the non-applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 21, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for grant of regular bail.

The applicant has been arrested on 08.07.2022 in Crime No.337 of 2022 registered with Police Station Khamgaon City for the offences punishable under Sections 354 and 354A of the Indian Penal Code read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act').

Having heard the learned counsel for the parties and having gone through the material placed on record, what transpires is that the victim was nine years old at the relevant time. The accusation against the applicant is that while the victim was attending the natural call the applicant caught hold of her from behind.

The Investigating Officer in the present case is Police Sub Inspector Ishwar Solanke. A certificate under Section 65B of the Indian Evidence Act, 1872 issued by Police Constable Sachin Londhekar is filed with the First Information Report which mentions that he had searched the CCTV footage of one shop and found that the applicant had caught hold of the victim from behind. The said certificate also indicates that Police Constable Sachin Londhekar has recorded the said CCTV footage of the said incident in his mobile. Police Constable Sachin Londhekar as well as the Investigating Officer have not obtained the said CCTV footage because the technician was not available.

If Police Constable Sachin Londhekar had some difficulty in obtaining the CCTV footage, he could have called the expert and seized the same. It was also the duty of the Investigating Officer to render necessary assistance to his team and to collect admissible evidence. Thus the important evidence in the form of CCTV footage is now not available with the Investigating Agency.

The Superintendent of Police, Buldana to conduct an enquiry into the aforesaid lapses and take appropriate action against the erring officials. The compliance be reported to this Court on or before 23.03.2022.

Coming back to the present application. The learned counsel for the non-applicant no.2 has tendered reply across the bar. The same is taken on record.

The learned counsel for the applicant has rightly pointed out that the maximum punishment for the offences in question is three years, except for the offence under Section 8 of the POCSO Act which may extend to five years.

The applicant is behind bars since his arrest on 08.07.2022. The charge-sheet has been filed. The charges are not yet framed. It will take time to commence and conclude the trial. In these circumstances, though the learned Additional Public Prosecutor and the learned counsel for the non-applicant no.2 oppose the application, no fruitful purpose would be served by keeping the applicant behind bars. The interest of prosecution could be protected by putting the applicant to appropriate terms. Hence, the following order is passed:-

ORDER

1. The criminal application is allowed.
2. Applicant-Rehman Khan Yusuf Khan be released on bail in connection with Crime No. 337 of 2022 registered with Police Station Khamgaon City for the offences punishable under Sections 354 and 354A of the Indian Penal Code read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
3. The applicant shall at the time of execution of bond furnish his address with telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case.

4. The applicant shall regularly attend the Court and co-operate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments except under extreme circumstances to the satisfaction of the trial Court.
5. The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
6. The applicant shall not enter the territorial jurisdiction of Police Station Khamgaon City till the trial is completed.
7. The applicant shall maintain the law and order.
8. In case of breach of any of the aforesaid conditions, the trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.
9. The fees of the appointed counsel for the non-applicant no.2 be quantified and paid as per the Rules.
10. The Superintendent of Police, Buldana to enquire into the matter as stated in the body of the order and to take appropriate steps if it is found that the lapses committed by the Investigating Officer and the Police Constable concerned were intentional. Compliance be reported by 23.03.2023.

The criminal application is disposed of in aforesaid terms.

(ANIL L. PANSARE, J.)

APTE