



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 BAIL APPLICATION NO. 462 OF 2024

Akhil Shaikh Budhan Shaikh

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. XYZ

..RESPONDENTS

...
Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent/State : Mr. Satish A. Gaikwad
Advocate assisting to PP : Mr. Kale Datta Sundarrao

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 26th APRIL, 2024.

PER COURT :-

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.363 of 2024 registered with Jinsi Police Station, Aurangabad, Tq. & Dist. Aurangabad, for the offences punishable under sections 376(2)(J), 376 AB and 341 of the Indian Penal Code and under sections 3, 4, 7, 8, 9(m) and 10 of the POCSO Act.

2. It is averred in the report by the mother of child of 8 years that the applicant took her daughter to his half constructed house at about 9 to 9.30 p.m. by assurance of showing of cat. He

caught hold her and the child was to sit over on his lap. Then he inserted his finger in her private part. She cried and rescued herself. She immediately went to her mother and told that incident. The report was lodged on 2nd day of the incident.

3. The learned advocate for the applicant submitted that the informant refused to conduct the medical examination of the victim child, therefore, there is no such incident of penetrative sexual assault on the part of the applicant on her. He further submits that the applicant is 49 years old. He has no criminal antecedents. The charge-sheet is filed. The applicant has roots in the society. Trial would take long period. He lastly prayed to allow the application.

4. The learned APP for the respondent-State and learned advocate for respondent no.2 have strongly opposed the application and submitted that the child of 8 years is sexually abused by aggravated sexual assault. Merely because, the medical examination of the child was not conducted the prosecution story cannot be prima facie disbelieved. There is no reason for the informant to implicate the applicant falsely in such a crime. There are presumption under sections 29 and 30 of the POSCO Act. Considering all these aspects, it is lastly submitted to reject the application.

5. Perused the charge-sheet, particularly the report and the report of the medical examination of the victim child wherein it is clearly stated that the relative of the victim child refused to examine

her. Therefore, opinion as to the penetrative sexual assault is not given. Apart from merit of the case, considering the peculiar set of the facts and the fact that the charge-sheet is filed, the applicant has roots in the society and trial would take long period, the applicant is entitled for bail. Therefore, the application deserves to be allowed on certain conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No.363 of 2024 registered with Jinsi Police Station, Aurangabad, Tq. & Dist. Aurangabad, for the offences punishable under sections 376(2) (J), 376 AB and 341 of the Indian Penal Code and under sections 3, 4, 7, 8, 9(m) and 10 of the POCSO Act be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence in any manner.
- III. If any breach of the above condition is noticed by the trial Court, the trial Court is at liberty to cancel the bail granted to this applicant without further reference to this Court.

(SANJAY A. DESHMUKH, J.)