



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 BAIL APPLICATION NO. 1406 OF 2024

SHAIKH ABDUL KHALEEL SHAIKH ABDUL KADIR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Nitin Bhavar Patil.
APP for Respondent/State : Mr. S. B. Pulkundwar.
Advocate for Respondent No.2 : Ms. Anagha Vasantrao Rotte
(Appointed Through Legal Aid).

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CORAM : S. G. MEHARE, J.
DATE : 09.09.2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for respondent No.2.
2. The applicant seeks bail in Crime No.82 of 2024, registered with Jawaharnagar Police Station, District Aurangabad, for the offences punishable under Sections 354, 354-A of the IPC and Sections 9-F and 10 of the POCSO Act.
3. It has been alleged against the applicant that on the day of the incident, there was second term examination of the students of Class-IV. However, the applicant being the Head Master took the victim in a vacant class room and outraged her

modesty. She narrated the incident to her class teacher. She reported to the concerned Supervisor of the school. The victim was asked to go to the Police Station for lodging the report. However, she said that she would go home and then lodge the report. Thereafter, she went to home, called her maternal aunt on phone and narrated the incident. Then the crime was registered.

4. Learned counsel for the applicant submits that his promotion was not liked to the other co-employees. Hence, he has been falsely implicated in the crime. On the day of the incident, there was second term examination of the student including the victim. It is improbable to lift a child from class room during the time of examination. The room where the incident has allegedly been committed was occupied by the students for examination. Hence, there was no substance in the allegation that the said class room was vacant. He has referred to the statement of the witnesses and pointed out that all the statements are recorded after thought. Probably, those statements been prepared by the Investigating Officer. He is languishing in jail since April. He has been suspended. The trial would take its time since the POCSO Courts are heavily

burdened. Nothing is to be recovered from him. Hence, he may be granted bail.

5. The question was raised that on the day of the incident, the so called class room where the incident happened was occupied by the students for examination. Hence, learned APP was directed to call for the details of the examination programme with class rooms for the second term examination. The school answered to his queries to Investigating Officer that the said class room number was 6-C. It has been told that in the room where the incident happened, the examination of the students was going on. However, it has been explained for the first time that the students were boiling in that room. Hence, they were asked to sit on the ground in *varanda*.

6. The learned APP has strongly opposed the application. He would submit that the offence is serious. Many witnesses are stating against him. The incident was narrated immediately after the incident to the class room teacher. The victim being a child has no reason to lie against the applicant. She was molested and felt insulted due to the acts of the accused who is 54. He has referred to the explanation of the School Committee about the class room which was allegedly vacant.

7. Learned counsel for the victim has vehemently argued that it is a serious matter. There is every possibility of tampering with the prosecution witnesses. The victim has narrated the incident immediately to her class teacher who reported it to the Supervisor. The class room was vacant. They had no enmity with the applicant. She submits that the matter may be expedited. She has also expressed an apprehension that the applicant may repeat the crime.

8. Perused the charge sheet and papers. For the first time when the Court asked whether the examination of the students were arranged in the room where the alleged incident happened, the prosecution came with the explanation that the room where the incident happened was boiling. Hence, the students were asked to sit in the *varanda*. This situation must affected to each and every room in the school. Why only that was vacated ? The prosecution explanation that the said room is facing east. The explanation appears material. Few of the statements are not consistent with other witnesses. Whether it was possible to the applicant to take the victim away from the other children is a matter of evidence. It is also doubtful whether the said room where the incident happened was

vacant and it was possible to the applicant to commit the offence.

9. The apprehension of the learned counsel for the victim of tampering with the prosecution witnesses may be guarded by imposing conditions. However, considering the period he is languishing in jail and the burden on the judges of under trial prisoner's cases, the prosecution cannot ensure the speedy trial which is the right of the accused under Article 19 of the Constitution of India. Admittedly, the weapon is not used in the crime. Therefore, the purpose keeping the applicant behind bar would be in effective. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **SHAIKH ABDUL KHALEEL SHAIKH ABDUL KADIR** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :
 - (a) The applicant should not tamper with the prosecution witnesses.

- (b) He should not enter the school where the incident happened till the trial is concluded.
- (c) He should not contact any of the witnesses, the victim and her family members.
- (d) He should not enter the vicinity where the school is situated till the trial is concluded.
- (e) The Secretary, High Court Legal Services, Sub-Committee, Aurangabad do pay the legal fees to advocate Ms. Rotte as per the schedule.

(S. G. MEHARE, J.)

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