

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

CRIMINAL BAIL APPLICATION NO. 114 OF 2022

Mohammed Salim Ali Hasan Khan ... Applicant
Versus
The State of Maharashtra and Anr. ... Respondents

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Mr. Khalid Azmi, for the Applicant.

Mr.A. A. Palkar, APP, for the Respondent No.1-State.

Mr. Kunal D. Nawale, appointed Advocate, for Respondent No.2.

Mr. Sudhir B. Desai, PSI, Bhiwandi City Police Station, present.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 8th APRIL, 2024.

P.C.

Heard learned Counsel for the applicant and the learned APP as well as Mr.Kunal Nawale, appointed through legal aid, to espouse the cause of the victim-respondent No.2.

2 The applicant has been arrested by Bhiwandi City Police Station in connection with C. R. No. I-369 of 2020 for the offences punishable under Sections 377, 506 of the Indian Penal Code and Sections 4,6,8,12 of Protection of Children from Sexual Offences Act, 2012.

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3 The prosecution case, in short, is as follows;

The applicant was 52 years of age at the relevant time and the victim was a 12 years old boy. On 8th November, 2020 at about 11:00 p.m., friend of the victim and one more person approached the father of the victim and informed him that there is something wrong in respect of his son. They had shown a video clip to the victim's father which was recorded in a mobile phone. The video depicted that one person had asked the victim to hold his penis in his hand and was asking the victim to move it back and forth. He thereafter, placed his penis in the mouth of the victim.

4 Upon enquiry with the victim, the complainant realized that the applicant, who was residing behind the Liberty Hotel, had committed such acts with the victim under threats to kill him. It was informed by the victim that it was first done in the month of February, 2020 and thereafter, he repeated the said acts on several occasions. The victim first informed about the said act to his friend. Subsequently, his friend took the video of the incident on 5th November, 2020 at about 1:00 p.m. when the applicant had called the victim. The video was taken in a public toilet at Lahoti Compound by the victim's friend.

5 A report was lodged by the victim's father. Investigation was conducted. Statements of the witnesses were recorded. The victim was sent for medical examination. After the investigation, a charge-sheet was filed against the applicant.

6 Mr. Azmi, learned Counsel for the applicant would argue that the medical report does not indicate any injury to the victim. There is a delay in lodging the First Information Report ("FIR" for short) which has not been explained. There is no independent eye witness and finally, since the applicant has been behind the bars ever since his arrest on 9th November, 2020, he prays for his release on bail.

7 On the other hand, the learned APP and learned Counsel for the victim strongly objected release of the applicant by reiterating the fact that there is no reason to disbelieve the statement of the victim as well as his friend.

8 Learned Counsel for the victim would argue that from the conduct of the applicant it appears that he is a pervert who had a lust to molest small children which is evident from the series of such incidences. It is strongly argued that in case of his release,

there is every possibility of repeating similar kind of offences not only *qua* the victim but other children of his age. It would, therefore, be not safe to grant him bail.

9 An FIR lodged by the father of the victim clearly depicts that the victim's friend and a person had informed as regards the alleged illegal act meted out to the victim since one year. The said person had shown a video to the first informant who was shocked after noticing the act *qua* his son. When the informant asked his son, he narrated as to how he had been threatened and then subjected to such unnatural sexual intercourse and also the act of masturbation forced upon him by the applicant. It is also clear that due to the threats of dire consequences obviously the victim could not inform about it to his father.

10 The statement of the victim in the form of questions and answers also supports recitals of the FIR. It appears from the statement of the victim that sometimes the applicant used to give him Rs.20/- and sometime on the point of knife he used to take him at his home and used to repeat the said acts.

11 The statement of the friend of the victim further confirms the allegations against the applicant. This witness had recorded video clandestinely. There could hardly be any medical evidence, however, the victim had given the history to the Medical Officer at the time of medical examination on 9th November, 2020.

12 It is quite apparent from the material on record that the victim, who was just 12 years of age at the relevant time, was subjected to unnatural offences by the applicant by penetrating his penis into his mouth and forcing him to do such act. The applicant, prima facie, appears to be pervert with a lust to commit unnatural offences, especially, in respect of small children. It would, therefore, be not safe to release him on bail as it would not only have an adverse psychological effect on the mind of the victim but would also pose a danger to the other children of the vicinity.

13 The offence is indeed serious and grave. Merely because the applicant has been incarcerated ever since his arrest would not *ipso-facto* mean that he is entitled to be released on bail. Consequently, the application needs to be rejected and hence, stands rejected.

14 The trial Court shall frame the charge and proceed to continue with the trial without granting unnecessary adjournments.

15 Application is disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]