

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

BAIL APPLICATION NO.1473 OF 2023

Umesh Gammar Thapa

.Applicant

Versus

The State of Maharashtra & ors.

.Respondents

Mr. Shubhangi Parulekar, Advocate, for the Applicant.

Mr. S. S. Chaudhari, APP, for Respondent No.1 – State.

Mr. Prathmesh Naik, Advocate, for Respondent No. 2.

Mr. Varbate, PSI, Chinchwad Police Station, Pimpri-Chinchwad, Pune
present

CORAM: MADHAV J. JAMDAR, J.

DATE: 12.03.2024

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1. Heard Ms. Parulekar, learned Counsel for the Applicant, Mr. Chaudhari, learned APP for Respondent No.1-State and Mr. Naik, learned Counsel for Respondent No.2.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	331 of 2021
2.	Date of registration of F.I.R.	25.10.2021
3.	Name of Police Station	Chinchwad Police Station, Pimpri-Chinchwad, Pune
4.	Sections invoked	7 & 8 of the P.O.C.S.O. Act, 2012
5.	Date of incident	25.10.2021
6.	Date of arrest	25.10.2021

3. The informant is the father of the victim. The age of the victim at the time of the incident was 4 years. As per the prosecution case, the Applicant is the neighbour of the victim. The Applicant was living alone and he is a friend of the informant. The incident took place on 25.10.2021. As the victim was not seen, the informant was searching for the victim. He eventually found the victim in the house of the Applicant and saw that she was sitting on the thighs of the Applicant. The father of the victim found that the Applicant had removed the victim's undergarments and was also touching the victim's genitals.

4. It is the submission of Ms. Parulekar, learned Counsel appearing for the Applicant that the offence is punishable under Sections 7 and 8 of the *Protection of Children from Sexual Offences Act, 2012* ("POCSO") and that the maximum punishment is five years imprisonment. She submitted that the Applicant is behind bars for about two years and four months. Therefore, bail may be granted to the Applicant.

5. Mr. Chaudhari, learned APP appearing for Respondent No.1 – State and Mr. Naik, learned Counsel appearing for the Respondent No.2 vehemently opposed the Bail Application and submitted that the offence is extremely grievous. The victim was four years old at the time of the incident in question and the victim's father is an eye-witness to the said incident. Therefore, bail may not be granted to the Applicant.

6. Mr. Chaudhari, learned APP appearing for Respondent No.1 – State submitted that by Order dated 06.03.2023 passed by the learned Special Judge under POCSO Act, Pune below Exh. 12 in Special Case No.960 of 2021, the Charge was altered to Section 5(m) of POCSO and the maximum punishment is imprisonment for life.

7. Mr. Chaudhari, learned APP appearing for Respondent No.1 – State after taking instructions from the Investigating Officer who is personally present in Court, states that charge is already framed and the matter is placed today before the learned trial Court for recording evidence of two witnesses. He submitted that the State is taking steps to conclude the trial as expeditiously as possible and in any event, within a period of six months from today.

8. In the present case, the offence is punishable under POCSO. The victim was four years old at the time of the incident in question. The informant who is the father of the victim, is an eye-witness to the incident. The offence is extremely grievous.

9. Today, the matter is kept for recording the evidence of two witnesses in the trial Court.

10. No case is made out for grant of bail to the Applicant.

11. The Bail Application stands rejected.

[MADHAV J. JAMDAR, J.]