

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1765 OF 2023

Mohd. Saleem Raees Ahmed ...Applicant

*Versus*

The State of Maharashtra & Anr. ...Respondents

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Ms. Aisha Z. Ansari, for the Applicant.

Mr. P. H. Gaikwad, APP, for the Respondent-State.

Ms. Kajal Upadhyay, for Respondent No.2.

Mr. Rahul Raghunath Pagare, Police Constable, Ayesha Nagar Police Station, Malegaon, present.

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**CORAM : MADHAV J. JAMDAR, J.**

**DATED : 02 FEBRUARY 2024**

**P.C.:**

**1.** Heard Ms. Ansari, learned Counsel appearing for the Applicant, Mr. Gaikwad, learned APP appearing for the Respondent-State and Ms. Upadhyay, learned Counsel appearing 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.                      | 06 of 2023                                                                    |
| 2 | Date of registration of F.I.R. | 16/01/2023                                                                    |
| 3 | Name of Police Station         | Ayesha Nagar Police Station,<br>District-Nashik                               |
| 4 | Section/s invoked              | 354 & 354-A of the <i>I.P.C.</i> ,<br>1860 and<br>8 of <i>POCSO Act, 2012</i> |

|   |                             |            |
|---|-----------------------------|------------|
| 5 | Date of incident            | 20/12/2022 |
| 6 | Date of arrest              | 17/01/2023 |
| 7 | Date of filing Charge-sheet | 06/03/2023 |

**3.** As per the prosecution case, on 20th December 2022 the victim was walking towards her house and at that time at about 4:30 p.m. the incident occurred. As per the F.I.R., an unknown person was riding a bicycle and came close to the victim and sexually assaulted her and immediately thereafter fled on his bicycle.

**4.** Ms. Ansari, learned Counsel appearing for the Applicant submitted that the incident in question occurred on 20th December 2022, the F.I.R. has been lodged on 16th January 2023. She submitted that there is a delay of about 27 days in lodging the F.I.R.. She further submitted that the Applicant has been arrested on 17th January 2023 and immediately on the very day he has been sent to judicial custody. Thereafter, Charge-sheet was filed on 6th March 2023. She submitted that the investigation is completed and till date, there is no progress in the trial. She further submitted that the offence is punishable under Sections 354 & 354-A of the *Indian Penal Code, 1860* ("IPC") and Section 8 of *Protection of Children from Sexual Offences Act, 2012* ("POCSO Act"). She submitted that the maximum punishment is 5 years and the Applicant has been under incarceration for more than

one year. She also submitted that there are no antecedents. She submitted that in the supplementary statement made by the victim, there are improvements and the Test Identification Parade ("T. I. Parade") is not properly held. She states that although the Applicant is from Malegaon and as most of the witnesses are from Taluka-Malegaon, District-Nashik, the Applicant, if released on bail will reside at his cousin brother's residence i.e. C/o. Akhlaque Ahmed Rafeeqe Ahmed, 2nd Floor, Room No.207, Sapte House, C.S.T. Road, Kurla (West), Mumbai - 400 070.

**5.** Mr. Gaikwad, learned APP and Ms. Upadhyay, learned Counsel appointed by this Court as *Amicus Curiae* to represent Respondent No.2 strongly opposed the Bail Application. They submitted that although there is a delay in lodging the F.I.R., the delay has been explained. They have pointed out statements of several witnesses to show that the Applicant is involved in the said offence. They submitted that the incident has been captured on C.C.T.V. and there is a C.C.T.V. footage on record which shows involvement of the Applicant in the said offence. They submitted that the T. I. Parade has been conducted and the Applicant has been identified by the victim.

**6.** Mr. Gaikwad, learned APP, on instructions, stated that there are no antecedents. However, Ms. Upadhyay, learned *Amicus*

*Curiae* submitted that the manner in which the incident has occurred clearly shows that the Applicant is a habitual offender and the victims may not have come forward to file a complaint.

**7.** A perusal of the Charge-sheet shows that the incident occurred on 20th December 2022 and the F.I.R. has been lodged on 16th January 2023. The Charge-sheet is filed on 6th March 2023. Thus, the investigation is also completed. Till date, there is no progress in the trial and even the charge is also not framed. As per the Charge-sheet there are a total of about 20 witnesses proposed to be examined by the Prosecution. Accordingly, the trial will take a considerably long time.

**8.** The offence registered against the Applicant is under Sections 354 and 354-A of the IPC and Section 8 of the *POCSO Act*. Ms. Ansari, learned Counsel appearing for the Applicant submitted that the maximum punishment for said offence is 5 years and the Applicant has already been under incarceration for about more than one year. Accordingly, the Applicant is entitled to be released on bail by imposing stringent conditions.

**9.** The Applicant does not have any criminal antecedents.

**10.** Ms. Ansari, learned Counsel appearing for the Applicant states that as several witnesses are from Malegaon Taluka, Nashik District, the Applicant will therefore not reside within Taluka-Malegaon, District-Nashik and that the Applicant will

reside at C/o. Akhlaque Ahmed Rafeeqe Ahmed, 2nd Floor, Room No.207, Sapte House, C.S.T. Road, Kurla (West), Mumbai 400 070.

**11.** The Applicant does not appear to be at risk of flight.

**12.** Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

### **ORDER**

- (a) The Applicant - Mohd. Saleem Raees Ahmed be released on bail in connection with C. R. No.6 of 2023 registered with the Ayesha Nagar Police Station, Malegaon, District-Nashik on his furnishing P. R. Bond of Rs.25000/- with one or two solvent sureties in the like amount.
- (b) The Applicant shall not enter the Malegaon Taluka, District Nashik after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Kurla Police Station, Kurla (West), District Mumbai City once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Kurla Police Station, Kurla (West) District-Mumbai City to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted

with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

- (f) The Applicant shall not tamper with the evidence and shall not contact or influence the Complainant or any witnesses in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

**13.** The Bail Application is disposed of accordingly.

**14.** This Court places on record its appreciation of the assistance rendered by Advocate Ms. Kajal Upadhyay. The High Court Legal Services Committee, Mumbai to pay her professional charges as per Rules and her appointment be regularized.

**[MADHAV J. JAMDAR, J.]**