

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

CRIMINAL BAIL APPLICATION NO. 3707 OF 2022

Ahmed Husain Mohammed Israil Shaikh ... Applicant
Versus
State of Maharashtra and Anr. ... Respondents

.....
Mr. A. A. Mir, for the Applicant.

Ms. Anamika Malhotra, APP, for the Respondent No1-State.

Mr. S. L. Vaswani, Appointed Advocate, for Respondent No.2.
(through V.C.)

Mr. Sachin Tambe, MIDC Police Station, Mumbai, present.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 11th MARCH, 2024.

P.C.

This is an application for bail.

2 Facts in brief are as follows;

The applicant, who was then 25 years old, was arrested by MIDC Police Station, Mumbai, in C.R. No. 160 of 2021 for the offences punishable under Sections 341, 354 of the Indian Penal Code and under Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”).

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3 Victim was 11 years old studying in 6th standard at the relevant time. On 7th April, 2021, she was going to her friend's house for attending on-line class due to COVID-19 Pandemic. When victim alongwith her friend was about to cross a lane at Marol, Andheri (E), it is alleged that the applicant intercepted the victim and forcibly outraged her modesty by pressing her breast in a broad day light at about 1:15 p.m. The victim and her friend scared and ran away.

4 A report came to be lodged against the applicant with the aforesaid Police Station. The Investigating Officer after investigating the offence recorded statements of the victim and other witnesses. A spot panchanama was also drawn and the charge-sheet came to be filed as above. The applicant was arrested on the date of the incident itself.

5 The learned Special Judge under POCSO rejected his first bail application on 24th June, 2021.

6 I heard Mr. Mir, learned Counsel for the applicant. He urged to release the applicant on the ground that ever since his arrest, the

applicant is languished in jail, more particularly, in view of the fact that the charge has not yet framed.

7 On the other hand, Mr. Vaswani, learned Counsel appointed to represent the victim, strongly objected release of the applicant on bail, firstly, on the grounds that the applicant had committed a serious offence in respect of a small girl in a broad day light. Secondly, in case of his release, there is likelihood of repeating the same offence, thirdly, he might abscond being a resident of West Bengal. Learned APP spoke in tune with learned Counsel for the victim.

8 From the statement of the victim and the other material placed on record, it is implicit that the applicant has committed sexual assault with sexual intent by pressing the breast of the victim in a broad day light. The maximum punishment under Section 8 of POCSO Act is five years with fine.

9 Admittedly, the applicant is a permanent resident of West Bengal and it is not shown whether he has roots in the State of Maharashtra. In case of his release, there is every possibility of his abscondence in order to avoid prosecution. It also reveals from the

record that he is a resident of the same area where the victim resides and, therefore, in case of his release it would adversely affect psyche of the victim as she was just 11 years of old at the time of the incident. It might disturb and trouble her normal life. It is not clear whether there are adverse antecedents *qua* the applicant. Nevertheless, in light of the aforesaid fact, I am not inclined to grant bail.

10 The application is rejected.

11 The trial Court shall expedite the hearing of the case without granting unnecessary adjournments either to the prosecution or to the defence.

12 Application is disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]