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

CRIMINAL BAIL APPLICATION NO. 3902 OF 2022

Umesh Bhai Maganbhai Harijan
@ Umesd Bhai @ Umesh Harijan .. Applicant

Vs.
The State of Maharashtra & Ors. .. Respondents

.....
Ms. Sana Shaikh a/w Maya Updeshe, Pratik Thadani, Anuradha
Srivasthu, Kulsum Shah for the applicant
Mr. M.G. Patil, APP for the respondent No.1 – State
Ms. Shraddha Sawant, appointed Advocate for respondent no.2
Mr. R.S. Patil, H.C, /2072 Khopoli Police Station present

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CORAM : PRITHVIRAJ K. CHAVAN, J.

CLOSED ON : 19th APRIL, 2024.
PRONOUNCED ON : 22nd APRIL, 2024.

P.C.

1. The applicant has been arrested by Khopoli Police Station in C.R. No. 27 of 2022 for the alleged offences punishable under Sections 376AB, 354A (1) (i), 354A (1) (iii), 341 and 506 of the Indian Penal Code and Sections 6, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act).

2. The facts are as follows.

3. There are two victims aged about 7 years and 11 years. The applicant who was aged about 37 years was their neighbour. Somewhere between 25.01.2022 and 03.02.2022 wife of the applicant had been to her relatives along with the children and, therefore, the applicant was alone at home. On one evening, the applicant called daughter of the first informant along with another victim at his house under the pretext of giving them ice-cream. The second victim was the daughter of sister-in-law of the first informant. When the first informant returned home and inquired about her daughter and the another victim, she was informed by her son that they had been to the house of the applicant. The door of the house was closed from inside. When the first informant called her daughter, the applicant opened the door and the victim returned home. Upon being asked by the first informant as to what they were doing in the house of the applicant and why the door was locked from inside, the victim did not say anything but said that she was watching TV. The victim was apparently scared. The first informant had, therefore, a suspicion that something was wrong.

4. Thereafter, the applicant used to sit outside his house and watch the children and especially, the daughter of the first

informant playing. On 06.02.2022, when the wife of the applicant had been to somewhere else, the applicant again called both the victims under the pretext of giving them ice-cream. At this time, the informant who was already carrying some suspicion in her mind inquired with the victim about the past incidents whereupon she realized that the applicant had shown them obscene videos on his mobile phone. Thereafter, he made both the victims lie on the bed. He removed clothes of the victim and fondled her body by inappropriately touching her private parts. He inserted his finger in her private part and also touched his penis to her private part. He had threatened her not to disclose about it to anyone. He committed similar act with another victim.

5. A report came to be lodged on 07.02.2022. The Investigating Officer recorded the statements of the victims, the first informant and other witnesses. The statements of the victims as well as the first informant were recorded by the Judicial Magistrate under Section 164 of the Cr.P.C. The victims were referred for medical examination. The mobile phone of the applicant was seized and was forwarded to the Forensic Science Laboratory for examination. After investigation, a charge-sheet has been filed. Having failed in

his first attempt to secure bail from the Special Court, the applicant has approached this Court.

6. I heard Ms. Shaikh, learned Counsel for the applicant, learned APP and the learned Counsel appointed to espouse the cause of the victims. I have also perused the report of the Investigating Officer opposing the application for bail.

7. Ms. Shaikh would argue that the applicant has been falsely implicated in this case owing to a dispute in respect of the licensed premises. The applicant is not involved into any of the offences as alleged. Learned Counsel would invite my attention to the medical report which indicates that there was no evidence of penetrative vaginal sexual intercourse. She would argue that the prosecution has not been able to tell the exact date of alleged incident. The statements of the first informant and the mother of the other victim are contradictory. Even the statements under Sections 161 and 164 of the Cr.P.C. are not consistent. The Counsel would further argue that since the applicant is behind the bars for more than 2 years and there is no likelihood of framing the charge in near future, he be released on bail.

8. On the other hand, learned APP while strongly objecting the application took me through the statements of the victims recorded under Section 164 of the Cr.P.C. as well as the FSL's report *qua* the mobile handset of the applicant coupled with the history given to the medical officer by the victims at the time of their medical examination. He would argue that there was no reason for the first informant or the victims to falsely implicate the applicant. Rather, the alleged false implication due to a civil dispute is an afterthought and is simply a counterblast to the present FIR. He invites my attention to the report dated 12.04.2022 addressed to the Superintendent of Police, Raigad, by the wife of the applicant which is after registration of the instant FIR against the applicant.

9. Learned Counsel appearing for the victims spoke in tune with the learned APP by inviting my attention to the statement of the mother of the victim recorded by the Magistrate under Section 164 of the Cr.P.C. She would argue that neither the applicant nor the parents of the victims had relationship of licensor or licensee as alleged by the learned Counsel for the applicant. Finally, taking strong exception to the arguments of the Counsel for the applicant, she would argue that in case of release, there is every likelihood of

repeating similar offences by the applicant, which would definitely have an adverse impact on the psychology of the victims and their family members. It is further submitted that charge is likely to be framed by the trial Court on 20.04.2024 and, therefore, the matter would be concluded within a reasonable period.

10. The mobile handset has been duly seized by the Investigating Officer in view of the seizure panchanama. Seizure of the mobile handset of the applicant and its examination by the Cyber Forensic Laboratory in respect of the SIM card, memory card and other important aspects, the FSL observed that the data reveals obscene videos and images. The details of which are given in the file name as depicted in the said report. Even, MD5 Hash value of the file in respect of the obscene videos and images has been mentioned in the said report. One thing is clear that what had been stated by the the victims in their statements under Section 161 and 164 of the Cr.P.C. has some substance as regards showing them obscene videos and images by the applicant from his mobile handset.

11. The statement of the first victim under Section 164 of the Cr.P.C. Recorded by the JMFC, Khalapur on 10.02.2022 indicates

that she was 11 years old. The applicant was a tenant residing in front of their house. He had called the victim and her friend (another victim) at his house and given them *Kulfi*. Thereafter, he had shown obscene videos and images from his mobile handset and thereafter touched her private part as well as private part of her friend. He threatened them not to disclose the same and in case they disclose all of them would be bitten.

12. Similarly, another victim in her statement before the learned JMFC under Section 164 of the Cr.P.C. stated that they were taken into his house by the applicant. The applicant removed the clothes of other victim. She stated that the the applicant had not done anything with her. Mother of one of the victim in her statement recorded under Section 164 of the Cr.P.C. has stated before the Magistrate that when the applicant had called both the victims at his house on 06.02.2022 under the pretext of giving them ice-cream, she asked the victim as to what the applicant was doing by calling them in his house ? The victim told her that the applicant had inappropriately touched her by removing her clothes and also inserted his finger into the vagina of the first victim. It has also been stated that the applicant had put his penis into the mouth of

the victim and also touched her private part.

13. While giving history to the Medical Officer, the first victim had stated that she had been to the house of the applicant along with her cousin (other victim). The applicant had given them ice-cream. He locked the door from inside and thereafter he had shown her some obscene videos, fondled her body and touched her private part. Indeed, the medical report reveals that there may not be any evidence of penetrative vaginal sexual intercourse, nevertheless, it does indicate that there was penetration by finger into the vagina. *Prima facie*, I do not see any reason to disbelieve the statements of the victims recorded by the Magistrate and by the Police as well as the history given by the victims to the Medical Officer. As already stated, the mobile handset of the victim *prima facie* confirms that his mobile handset contained obscene videos and images and, therefore, at this stage, it cannot be said to be a total false case.

14. The wife of the applicant appears to have written a letter the Superintendent of Police wherein she has not only levelled allegations against the mother of the victim but against the police

personnel also, who had allegedly implicated the applicant falsely in the case under the provisions of POCSO Act at the behest of mother of the victim. The said complaint of the wife of the applicant is dated 12.04.2022, which is much after the registration of the FIR by the first informant on 07.02.2022. *Prima facie*, it appears to be counter-blast to the said FIR.

15. The learned APP invites my attention to the attendance register of the applicant which substantiates the fact that on the alleged day of incident, he was not at his work place as the incident had occurred during evening hours.

16. In view of Section 3(a) and (b) of the POCSO Act, it is not necessary that there should be full insertion of penis into the vagina or mouth but even if it is inserted to any extent it constitutes an offence of penetrative sexual assault, which provides maximum punishment for life imprisonment in view of Section 4 of the said Act.

17. *Prima facie*, the offences are indeed serious. Looking to the age of the victims and the fact that the applicant is their neighbour, it would be quite improper to release him on bail, else, it would not

only affect the psychology of the victims and her family but there is every likelihood of repeating similar offences or influencing, threatening or coercing the witnesses by the applicant. If released, the very object of POCSO Act would be frustrated where victims of such a tender age were attempted to be molested / molested by the applicant by calling them in his house on the pretext of giving them ice-cream. The tendency of the applicant *prima facie* cannot be ignored. He not only seduced them but betrayed such small girls under the pretext of Ice-cream. It is not the case that the trial would take a long duration in view of the fact that the Roznama of the trial Court, reveals that the charge would be framed on 20.04.2024. The trial Court shall proceed with the trial without granting unnecessary adjournments either to the prosecution or the accused.

18. Having considered the material on record and for the reasons stated hereinabove, I am not inclined to grant bail to the applicant. Consequently, the application is rejected.

19. It is made clear that the above observations are *prima-facie*. The trial Court shall proceed with the trial and decide the case on

its own merit.

20. Application stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)