

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 720 OF 2024

XYZ

.... Applicant

Versus

The State of Maharashtra and Anr.

.... Respondents

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Mr. Ganesh Gupta a/w Ms. Roshini Naaz, Mr. Aditya Walokar, Mr. Sahil Ghorpade and Adv. Bhagyesh Patil i/b G. G. Legal Associates, for the Applicant.

Mr. Swapnil Walve, APP, for Respondent No.1 – State.

Mr. Saurabh Bhutala, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th NOVEMBER, 2024.

P.C. :

1. By this application, Applicant is seeking cancellation of bail granted to Respondent No.2 by learned Extra Joint District Judge and Additional Sessions Judge, Panvel in connection with C. R. No. 007 of 2024 for the offences punishable under Sections 354, 354-A (1)(i) of the Indian Penal Code, 1860 and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. It is prosecution's case that on 7th January, 2024 in the evening at around 7:00 p.m. the daughter of first informant/Applicant i.e. victim was playing cycle out side the house. At about 7:20 p.m. victim entered the house and she was crying Applicant asked about the reason for crying at that time, victim told the Applicant that while she was parking her bicycle, the Respondent No.2 touched her private part therefore, she felt embarrassed and felt awkward and she has been molested by the Respondent No.2. Thereafter, F.I.R. was lodged against the Respondent No.2.

In supplementary statement dated 10th February, 2024 victim told the Applicant that the Respondent No.2 touched her private part for two to three times and molested her. The Applicant went to the house of the Respondent No.2 and asked him why he touched the private part of the victim. Initially, the Respondent No.2 refused the allegations made by the applicant thereafter wife and daughter of the Respondent No.2 abused the Applicant. The Respondent No.2 manhandled husband of the applicant thereafter, complaint was lodged with the police station.

3. It is contention of learned counsel for the Applicant that after filing charge sheet the Respondent No.2 filed application for

bail before the learned Sessions Judge, without giving notice to the Applicant. The bail is granted to the Respondent No.2 which is against the mandatory provisions of law. Hence, requested to allow the application.

4. It is contention of learned counsel for the Respondent No.2 that bail is granted to the Respondent No.2 after hearing the all parties. The well reasoned order is passed by learned Additional Sessions Judge and no interference is required in it. Hence, requested to reject the application.

Learned APP submitted that appropriate order be passed.

5. I have heard all learned counsel. Admittedly bail order is passed without giving notice to the Applicant, who is first informant. It is mandatory provisions in POCSO cases that while passing order, the Court has to hear the first informant or guardian of the victim. The learned Sessions Judge has not considered this fact and has passed the impugned order. Hence, it is necessary to set aside the impugned order and I pass following order:

ORDER

- i. Application is allowed.
- ii. The impugned order dated 12th March 2024 passed by

the Extra Joint District Judge and Additional Sessions Judge, Panvel in connection C. R. No. 007 of 2024 registered at Uran Police, Navi Mumbai for the offence punishable under Sections 354, 354-A(1) (i) of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offence Act, 2012 granting bail to the Respondent No.2 is quashed and set aside.

iii. The learned Sessions Judge shall decide the bail application of the Respondent No.2 afresh by giving opportunity of hearing to the Applicant, till the decision of bail application, the Respondent No.2 is protected from arrest.

6. In view of above, the criminal application stands disposed of.

(SHIVKUMAR DIGE, J.)