

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 72 OF 2024
WITH
INTERIM APPLICATION NO. 1395 OF 2024

Majid Bencchu Aalam

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

SHRIKANT
SHRINIVAS
MALANI

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Date: 2024.09.04
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- Ms. Ayesha Maldar a/w Ms. Vibha Mishra, for Applicant.
- Mr. Tanveer G. Khan, APP for Respondent No.1.
- Mr. Rahul P. Kasbekar, appointed through Legal Aid for Respondent No.2.
- Mr. Kiran Gangurde, PSI, Versova Police Station.

CORAM : MANISH PITALE, J.

DATE : 03rd SEPTEMBER, 2024.

P. C. :

1. Heard Ms. Ayesha Maldar, learned counsel for the applicant and Mr. Tanveer Khan, learned APP for respondent – State, as also Mr. Rahul Kasbekar, learned counsel appointed to appear on behalf of respondent No.2.

2. In the present case the applicant is seeking bail, as he was arrested on 08.10.2016, in connection with First Information Report No.0363 of 2016, registered at Police Station Versova, Mumbai, for offences under the IPC and POCSO Act. At the time of filing of charge-sheet, offences with which the applicant stood charged were Sections 354 and 376 of IPC and Sections 4, 8 and 12 of the POCSO Act.

3. In the present case the informant is the grandmother of the

victim, it is stated that the victim at the time of the incident was about 6 years old. She informed her grandmother as to the manner in which the applicant had sexually assaulted her on the date and time of the incident, which eventually led to registration of the FIR. The statement of the victim under Section 161 of the Code of Criminal Procedure (Cr.P.C) was recorded on 08.10.2016 itself and the applicant was arrested. The medical examination was conducted on 09.10.2016. The applicant has remained behind bars for almost 8 years.

4. The learned counsel appearing for the applicant submitted that the applicant having suffered incarceration for a long period of 8 years itself is a ground on which this Court may consider releasing him on bail, considering the fact that the charge was eventually framed recently on July, 2024 and the trial is yet to commence.

5. Apart from this, attention of this Court is invited to the material on record, to submit that the medical examination report does not support the case of the prosecution and even if the allegations are to be taken on face value, at worst, offences under Sections 8 and/or 12 of the POCSO Act could be alleged. The maximum imprisonment for these provisions is 5 years and 3 years respectively. The applicant having already undergone almost 8 years of incarceration, the present application deserves to be granted.

6. On the other hand, learned APP submitted that the offences registered against the applicant are serious. Section 4 of the POCSO Act carries a minimum punishment, in the facts of the present case, of 20 years of imprisonment as the victim at the time of the incident was less than 16 years old and carries a maximum punishment for life imprisonment. Even under Section 376 of the IPC, the applicant is facing maximum sentence for imprisonment for life. It is submitted that the history recorded during the medical examination, when compared with the other material on record does indicate a strong *prima facie* case against the applicant. It is further brought to the notice of this Court that the charge-sheet cites 10 witnesses and therefore, the trial can be expeditiously conducted.

7. The learned counsel appearing for respondent No.2 supported the contention raised by the learned APP. He further submitted that the overt acts attributed to the applicant make out the serious offences with which he is charged and therefore, it would not be safe to enlarge the applicant on bail.

8. This Court has considered the rival submissions in the light of the material on record.

9. A perusal of the statement of the informant, leading to registration of the FIR, as well as statement of the victim recorded under

Section 161 of the Cr.P.C. shows that the applicant allegedly touched the private part of the victim. The history recorded in the medical examination conducted on the next day i.e. 09.10.2016 clearly reveals improvement in the version when allegation of “insertion of the finger” in the private part of the victim is mentioned and it is also alleged that the applicant “inserted his private part in the mouth of the victim.” Such allegations do not find place in the version of the informant as well as the victim recorded on the date of the registration of the FIR on 08.10.2016. It is also relevant to note that the medical examination report records no external injury or redness or bleeding from the vaginal area of the victim.

10. Considering the aforesaid material, it can be said *prima facie* that, at worst, the allegation against the applicant could be of having touched the private part of the victim on the date and time of the incident.

11. In this context fn the provisions of the POCSO Act are perused, the said allegation of touching the private part of the victim would be covered under the definition of sexual assault under Section 7 of the POCSO Act. Punishment for the said offence under Section 8 thereof, is imprisonment for a minimum period of 3 years and maximum of 5 years. The punishment for offence under Section 12 of the POCSO Act i.e. punishment for sexual harassment is imprisonment which may extend for a period of 3 years. *Prima*

facie, considering the first stage i.e. when FIR was registered, the nature of allegations made against the applicant *prima facie* do not indicate penetrative sexual assault, which is an offence punishable with imprisonment for minimum period of 20 years as the victim was less than 16 years old and maximum punishment of imprisonment for life.

12. Therefore, this Court finds that the applicant having already undergone incarceration for a period of almost 8 years becomes a relevant circumstance. This indicates that the applicant has already suffered imprisonment for a period more than the maximum punishment that can be imposed under Sections 8 and 12 of the POCSO Act. In that sense, the applicant has made out a case for being enlarged on bail.

13. It is also to be noted that the applicant having suffered incarceration for about 8 years, charge has been framed only recently in July, 2024 and the trial is yet to begin. This is also a circumstance to be taken into consideration, while disposing of the present application. The apprehension expressed about the danger of enlarging the applicant on bail can be addressed by imposing stringent conditions upon the applicant.

14. In view of the above, the application is allowed in the following terms :

(A) The applicant shall be released on bail in connection with

FIR No.0363 of 2016, registered at Police Station Versova, Mumbai, on furnishing PR bond of ₹ 25,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.

- (B) The applicant shall not contact the victim or her family members in any manner, during the pendency of the trial.
- (C) The applicant shall report to the Police Station Versova, Mumbai on the first Monday of every alternate Month between 11.00 a.m. and 1.00 p.m., during the pendency of the trial.
- (D) The applicant shall attend the Trial Court proceedings on each and every date, except when specifically exempted by the Trial Court.
- (E) The applicant shall not tamper with the evidence in any manner. The applicant shall not influence the informant, witnesses or any other persons concerned with the case.
- (F) The applicant shall upon release immediately inform the Investigating Officer about his Contact numbers and residential address and update the same in case of any change.

15. Needless to say, in case of violation of any of the aforesaid

conditions, the bail granted to the applicant shall be liable to be cancelled.

16. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

17. It appears that during pendency of this bail application, an interim application was also moved by the applicant in the form of a letter addressed through Jail. In view of disposal of the bail application, the interim application is also disposed of.

18. The application is disposed of in above terms.

(MANISH PITALE, J.)