

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

BAIL APPLICATION NO. 917 OF 2024

David s/o Keshavrao Ambildhage	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Amol V. Ratnaparkhe for the Applicant.
Mr. Balraj B. Kulkarni, APP for Respondent-State.
Ms. Urmila Yengade i/by Rahul D. Salve for Respondent No.2.
Ms. S. L. Doke, PSI, Borivali Police Station, Mumbai.

**CORAM: MANISH PITALE, J.
DATE : 15th OCTOBER 2024**

P.C. :

. Heard learned counsel for the applicant, learned APP for the respondent-State, as also the learned counsel for respondent No.2 (first informant).

2. The applicant was arrested on 1st May 2022 in connection with FIR No. 0572 of 2022 dated 29th April 2022 registered at Borivali Police Station, Mumbai, for offences under Sections 354, 354-A, 323, 509 and 506 of the Indian Penal Code, 1860 (IPC) and Sections 9 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The informant is the daughter of the applicant and in her statement, leading to registration of the FIR, she has stated two specific instances of 26th April 2022 and 27th April 2022, when the

applicant indulged in behaviour, demonstrating the ingredients of the offences registered against him. She further alleged that from the year 2017 onwards, the applicant, despite the informant being his daughter, behaved in such a manner. Since the informant was minor at the relevant time, pertaining to the incident of year 2017 onwards, provisions of POCSO Act are also invoked in the present case.

4. The learned counsel for the applicant submits that the contents of the statement, leading to registration of the FIR, indeed show that the informant has made very serious allegations against her own father with regard to sexual abuse. But, it is submitted that the said allegations have been made in the backdrop of a matrimonial dispute between the applicant and his wife i.e. the mother of the informant. In this regard, a compilation of documents is tendered. The same is taken on record. By referring to the contents of the said compilation of documents, it is sought to be impressed upon this Court that the real grievance of the wife of the applicant and also of the informant was that the applicant was addicted to alcohol and that he use to disturb domestic peace by indulging in harassment and violence against his wife and the children, including the informant herein. It is submitted that the subject FIR was got registered at the behest of the wife of the applicant, in the backdrop of the serious matrimonial dispute between the parties. It is submitted that the applicant has suffered incarceration for a period of 2 years and 5

months and the maximum sentence that can be imposed in the present case, is imprisonment for 7 years under Section 9 of the POCSO Act, which pertains to aggravated sexual assault. It is submitted that the applicant is ready to abide by the conditions that may be imposed by this Court and hence, the application may be allowed.

5. On the other hand, the learned APP submits that the statement of the informant, leading to registration of the FIR, describes in detail, as to the manner in which the applicant was sexually harassing his own daughter. He also relies upon the statement of the informant recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on 7th July 2022, in support of his contentions.

6. The learned counsel appearing for respondent No.2 (first informant), has instructions to give no objection to the prayer of bail being pressed on behalf of the applicant. In fact, in this regard, the learned counsel for the applicant has invited attention of this Court to an affidavit-cum-NOC filed on behalf of the respondent No.2 before the Sessions Court, wherein she has specifically stated that due to the habit of drinking alcohol and violent behaviour of the applicant, in frustration, she had caused the FIR to be registered.

7. This Court has perused the material on record. Undoubtedly, the statement of the informant, leading to registration of the FIR,

is described in graphic detail, as to the manner in which the applicant used to allegedly sexually abuse his own daughter i.e. the informant. Some of the allegations pertain to the period when she was minor and therefore, provisions of the POCSO Act have been invoked in the present case. The statement of the informant recorded under Section 164 of the Cr.P.C. on 7th July 2022, although not as elaborate as her statement leading to registration of the FIR, does show that according to the informant, the applicant used to inappropriately touch her body and he used to make comments that could be said to be amounting to sexual abuse.

8. A perusal of the documents being part of the compilation, which has been taken on record, show that the wife of the applicant had filed a proceeding under the provisions of the Protection of Women from Domestic Violence Act, 2005 (DV Act) on 6th January 2021, praying for various reliefs, that was prior to the registration of the subject FIR and the thrust of the grievance in the said proceeding pertained to the addiction of the applicant to alcohol and the manner in which he used to harass his wife and children. There is no whisper of any sexual abuse against the applicant, much less in the context of the informant i.e. his own daughter. The compilation of the documents also shows that the wife of the applicant and on one occasion, his elder son, caused a series of Reports of Non-cognizable Offence (NCRs) to be registered against the applicant. In all of them, the grievance was

that the applicant used to physically assault his wife and children under the influence of alcohol. Again there was no reference to any sexual abuse by the applicant. The aforesaid NCRs were registered between 24th December 2017 and 2nd December 2022. In other words, the NCRs were registered prior to the registration of the subject FIR, with no reference to any sexual abuse by the applicant.

9. The aforesaid material does *prima facie* show that the subject FIR may have been registered in the backdrop of the matrimonial dispute between the applicant and his wife. There is some substance in the contention raised on behalf of the applicant that the respondent No.2 i.e. his own daughter (informant) could have been motivated to cause such an FIR to be registered in the backdrop of the matrimonial dispute between the applicant and his wife, as also his violent behaviour due to addiction to alcohol.

10. The aforesaid conclusion is supported by the affidavit-cum-NOC dated 9th November 2023 filed by the respondent No.2 (informant) before the Sessions Court. Relevant portion of the said affidavit reads as follows :

“3. I state that the accused is my father and he is a habitual of consuming Alcohol hence he used to be intoxicated all the time. My father was always used to be abusive towards my mother. Hence there was frequent fights and quarrels between my father and mother and I used to interfere between their quarrels he used to scold me saying stay away. It is personnel between your mother and me.

4. *I state that due to the bad behavior of my father towards my mother the entire family was harassed and were in trauma.*

5. *I state that out of frustration and anger towards my father I have filed the FIR against my father.*

6. *I say that I have no more grievances against the Accused and I am willing to support the imputations made in the FIR against the Applicant as the dispute between the Accused have been settled/compromised between the parties. I say that I have filed the FIR in fit of rage and anger and due to misunderstanding.*

7. *I say that due to misunderstanding and anger towards my father I had lodged the FIR against the Accused.*

8. *I say that I am 20 years old and last year student of B.com and want to pursue my career in MPSC, I am studying hard to built-up my career. Hence I do not wish to proceed with the matter. Hereto Annexed as "Exhibit A" is the Copy of the Adhar card of myself and "Exhibit B" is the copy of the Hall Ticket of T.Y.B.com Examination."*

11. Even before this Court, as noted hereinabove, respondent No.2 has instructed her counsel to give no objection to the prayer for bail being granted.

12. It is to be noted that with reference to the offences registered against the applicant in the present case, it is only regarding offence under Section 9 of the POCSO Act that the applicant can be punished for imprisonment for a period upto 7 years. The applicant has already undergone incarceration for a period about 2 years and 5 months. The charges are yet to be framed, thereby indicating that trial would take substantial period of time for completion.

13. In view of the above, the applicant has made out a case for being released on bail.

14. Accordingly, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. 0572 of 2022 dated 29th April 2022 registered at Borivali Police Station, Mumbai, on furnishing P.R. Bond of Rs. 25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- (c) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates 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. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The application is disposed of.

17. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

18. The applicant is permitted to furnish cash security of Rs.25,000/- for a period of four weeks.

MANISH PITALE, J.