

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

BAIL APPLICATION NO. 987 OF 2024

Santoshkumar Bharmhakumar Sharma

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

- Ms. Sana Shaikh, for Applicant.
- Ms. Rutuja A. Ambekar, APP for Respondent No.1 – State.
- Ms. Ashwini Bhilan Jadhav, for Respondent No.2 (appointed through Legal Aid).

CORAM : MANISH PITALE, J.

DATE : 28th NOVEMBER, 2024.

P. C. :

1. Heard, Mr. Shaikh, learned counsel for the applicant, Ms. Ambekar, learned APP for the respondent-State and Ms. Jadhav, learned counsel appointed to appear on behalf of the victim.

2. The applicant is seeking bail, as he was arrested on 01st August, 2022, in connection with First Information Report No.1229 of 2022, dated 01st August, 2022, registered with Police Station Malvani, District Brihanmumbai City, for offences under Section 354 of the Indian Penal Code, 1860 (IPC) and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The informant in the present case is the mother of the victim. She stated that the applicant, who is the step-father of the victim, acted in a

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specific manner, resulting in registration of the said offences. The statement of the victim, who at the relevant time was aged about 15 years confirmed the allegations made by the informant. She also described the manner in which the applicant touched her, resulting in registration of the said offences.

4. The learned counsel for the applicant submits that as per her instructions the victim in her statement recorded before the Magistrate under Section 164 of the Code of Criminal Procedure, 1898 (Cr.P.C) has completely resiled from her stand taken during the course of recording of her statement, during investigation. It is further submitted that the offences registered against the applicant carry maximum punishment of imprisonment of 5 years, while the applicant has already undergone incarceration for a period of more than 2 years and 3 months. It is submitted that in this situation, the application may be allowed.

5. On the other hand, the learned APP as well as the learned counsel appointed to appear on behalf of the victim have opposed the present application. The learned APP informs this Court that the statement of the victim recorded under Section 164 of the Cr.P.C. is in a sealed cover and it may be called from the concerned Court. It is further submitted that the ingredients of the offences are clearly made out from the statement of the informant as well as the victim.

6. This Court has considered the rival submissions. There is no clarity as regards the contents of the statement of the victim recorded under Section 164 of the Cr.P.C. But, this Court is not inclined to adjourn hearing of this application awaiting production of copy of the said statement.

7. This is for the reason that even if the allegation made by the informant and the victim are taken into consideration, to hold that the ingredients of the offences registered against the applicant can be said to be made out, the crucial factor in the present case is that the period of incarceration already suffered by the applicant. He was arrested on 01st August, 2022, thereby showing that he has suffered incarceration for more than 2 years and 3 months. The offence under Section 8 of the POCSO Act, prescribes minimum punishment of imprisonment of 3 years and maximum upto 5 years. Similarly, offence under Section 354 of the IPC provides for a minimum sentence of 1 year, extending upto 7 years.

8. The applicant having already undergone substantial period of incarceration as compared to maximum punishment that can be imposed, on this ground alone, this Court is inclined to allow the bail application.

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

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

FIR No.1229 of 2022, dated 01st August, 2022, registered with Police Station Malvani, District Brihanmumbai City, on furnishing P.R. Bond of ₹ 25,000/- with one or two sureties in the, to the satisfaction of the Trial Court.

- B) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. He shall attend the proceedings before the Trial Court on each and every date, except when exempted for reasons to be recorded in writing.
- C) The applicant shall furnish the details of his active mobile numbers and his local address to the Investigating Officer and the Trial Court within two weeks of being released on bail.
- D) The applicant shall not influence the victim, witnesses or any other persons concerned with the present case, during the pendency of the trial.

10. In the event the applicant granted bail, violates any of the conditions recorded hereinabove, the bail granted to her would be liable to be cancelled.

11. It is made clear that the observations made hereinabove in the

present order are limited to disposing of the present bail application. The Trial Court shall proceed on merits in the present case without being influenced by the observations made hereinabove.

12. The application is disposed of.

(MANISH PITALE, J.)