

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

BAIL APPLICATION NO. 1054 OF 2024

Salim Jumman Ansari ... Applicant
Versus
Neha Wasim Shaikh & Anr. ... Respondents

**WITH
BAIL APPLICATION NO. 2875 OF 2023**

Wasim Mustaq Shaikh ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

Mr. Rushabh Vidyarthi i/by Mr. Mehboob J. Shaikh for the Applicant in BA/1054/2024.

Ms. B. Sharda for the Applicant in BA/2875/2023.

Mr. Mayur S. Sonavane, APP for Respondent-State in BA/1054/2024.

Mr. Kiran C. Shinde, APP for Respondent-State in BA/2875/2023.

Mr. Zia Ur Rehman, Legal Aid Counsel, for Respondent No.2.

Mr. S. D. Patil, PSI, Shivaji Nagar Police Station, Mumbai.

**CORAM: MANISH PITALE, J.
DATE : 21st AUGUST 2024**

P.C. :

. By these applications, two accused persons have approached this Court seeking bail, as they were arrested in connection with FIR No. 0328 of 2023 dated 1st April 2023 registered at Shivaji Nagar Police Station, Mumbai, for offences under Sections 376, 376(2)(n), 376AB and 506(2) read with 34 of the Indian Penal Code, 1860 (IPC) and Sections 4, 8 and 12 of the Protection of

Children from Sexual Offences Act, 2012 (POCSO Act). Since the offences under POCSO Act are also registered against the applicants, notice was issued to the respondent No.2-victim and learned counsel appointed to appear on behalf of respondent No.2 is also heard.

2. The informant in the present case is the mother of the victim, who alleged that her husband i.e. the applicant in Bail Application No. 2875 of 2023 and a friend of her husband i.e. the applicant in Bail Application No. 1054 of 2024 had sexually abused her daughter, who at the relevant time was aged about seven years. On the basis of the statement of the informant, the FIR was registered and the applicants were arrested. The investigation was completed and charge-sheet was filed. The statements of the informant as well as the victim minor girl were recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.). Copies of such statements are also on record.

3. The learned counsel appearing for the applicants submitted that in the present case, the informant had claimed that she was required to take the victim to a doctor because of complaint of pain in the abdomen. The doctor had indicated that the pain could be due to hormonal changes or due to some physical abuse inflicted on the victim. It was submitted that no prescription or any other document, indicating such visit to the doctor, is part of the charge-sheet, thereby creating doubt about the aforesaid claim of the informant. It was further submitted that in the present case,

other than the informant, all the other witnesses, whose statements were recorded during the course of investigation, have given hearsay versions. In any case, such witnesses are related to the informant herself, thereby showing that they are interested witnesses. It is further submitted that, as on today, the victim girl is not living with her mother i.e. the informant and instead she is living with her grandmother. On behalf of the father of the victim, it was claimed that the minor daughter is even visiting her father in jail, thereby indicating that the allegations made in the present case ought not to be believed and it is a case of false implication.

4. It is also sought to be indicated that there was some acrimony and dispute between the informant and her husband i.e. one of the applicants before this Court and that in the backdrop of such acrimony, the possibility of false implication cannot be ruled out.

5. On the other hand, the learned APP has relied upon the material on record, including the statement of the victim child recorded under Section 164 of the Cr.P.C. It is submitted that the victim has described in graphic detail, as to the manner in which she was physically and sexually abused by the accused persons, who happened to be her father and a friend of her father. It is submitted that in the present case, the allegations of the victim are serious and presumption under Section 29 of the POCSO Act also operates.

6. The learned counsel appointed to appear on behalf of the victim also supported the submissions made by the learned APP. He further submitted that nature of the allegations made in the present case indicate the perverted minds of the accused persons and that it would be not only in the interest of the victim girl but also in the interest of the society at large that such persons are kept behind bars.

7. This Court has considered the rival submissions in the light of the material placed on record. In the present case, the informant while approaching the Police, amongst other things, has also stated that she actually saw the accused-father of the victim indulging in such physical abuse, a night before the FIR was lodged. She has stuck to her statement when it was recorded under Section 164 of the Cr.P.C.

8. But, the most crucial material in the present case is the statement of the victim minor girl herself recorded under Section 164 of the Cr.P.C. In response to question No.5 before the Magistrate, the victim girl has described in graphic detail, the manner in which she was physically and sexually abused by both the applicants. Such material does indicate a *prima facie* case against the applicants-accused persons. At this stage, it cannot be said that there is lack of material to support the prosecution case.

9. There is no material to support the theory of matrimonial dispute or acrimony between the informant and her husband,

being the basis of making such allegations. At this stage, it would be too much to accept the contention that the informant would use her own minor daughter, aged about seven years, to get back at her own husband, even if there was a matrimonial dispute between the two.

10. This Court is not inclined to accept the contentions raised on behalf of the applicants. The list of witnesses shown in the charge-sheet indicates that the prosecution intends to examine 13 witnesses. In practical terms, it is found that fewer witnesses are actually examined when the trial is undertaken. This indicates that the trial would perhaps be completed within a reasonable period of time.

11. In view of the above, the applications are dismissed.

12. However, the trial Court is directed to complete the trial as expeditiously as possible and to make an endeavour to complete the same within one year from today.

13. In the event, the trial is not completed within the stipulated period of time and the delay is not attributable to the applicants, liberty is reserved for the applicants to renew their prayer for bail.

MANISH PITALE, J.