

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1369 OF 2024

Jameer Ismael Shaikh

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr. Salman Pathan, for the Applicant.

Ms. P. P. Bhosale, APP, for the Respondent No.1-State.

Mr. Shreyas Barsawade (Through VC), for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED: DECEMBER 16, 2024

P.C.:

1. Heard Mr. Pathan, learned Counsel for the Applicant, Ms. Bhosale, learned APP for the Respondent No.1-State and Mr. Barsawade, learned Counsel appointed to represent the interest of the Respondent No.2.

2. The present Applicant has earlier filed Bail Application No.3154 of 2023. The said Bail Application was dismissed for non-prosecution. This is the second Bail Application filed under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C.R. No.	442 of 2023
2	Date of registration of F.I.R.	20/08/2023
3	Name of Police Station	Vimantal Police Station, District - Pune
4	Section/s invoked	376, 363, 376(n), 377, 354 & 506 of the <i>Indian Penal Code, 1860</i> ;

		4, 8 & 12 of the <i>Protection of Children from Sexual Offences Act, 2012</i> ; 66(e) of the <i>Information Technology Act, 2000</i> .
6	Date of arrest	27/08/2023
7	Date of filing Charge-sheet	November 2023

3. The Applicant has filed Application bearing Exhibit – 2 in Special Case (POCSO) No.1037 of 2023. The said Application has been rejected by Order dated 4th December 2023 passed by learned Additional Sessions Judge, Pune.

4. As per the prosecution case, the main allegations of penetrative sexual assault are against the child in conflict with law who is the son of the present Applicant. However, as far as the allegations against the present Applicant are concerned, the same are regarding molestation. The F.I.R. also reveals that the Applicant had threatened the victim that if she opposes the molestation, then he would tell his son i.e. child in conflict with law to make viral the photographs of the victim and the child in conflict with law.

5. It is the submission of Mr. Pathan, learned Counsel for the Applicant that the only role attributed to the Applicant is he inappropriately touched the victim and threatened her. He submits that the Applicant is behind bar since last about 1 year and 4 months. He submits that as far as the offences alleged against the present Applicant

are concerned, the maximum punishment is 5 years. He therefore submits that the Applicant be released on bail.

6. On the other hand, Ms. Bhosale, learned APP for the Respondent No.1 – State of Maharashtra and Mr. Barsawade, learned Counsel appointed to represent the interest of the Respondent No.2 submitted that the offence is very serious and therefore Bail Application be rejected. Both of them pointed out written Say of the victim dated 12th August 2024. In the said Say in Paragraph No.10, it is stated by the victim that the child in conflict with law has threatened the victim and her family members and told them to take back this case lodged against the Accused No.2 i.e. the present Applicant - father and son i.e. child in conflict with law and that if this case proceeds further he would kill the victim. It appears that with respect to the said threats, NCs have been lodged against the child in conflict with law on 14th December 2023 and on 27th May 2024 when the child in conflict with law has become major.

7. Mr. Barsawade, learned Counsel appointed to represent the interest of the Respondent No.2 submitted that the Applicant who is the father of the child in conflict with law not only abated the offence but in spite of the knowledge of the offence committed by the child in conflict with law failed to inform about the same to the Police. He therefore submitted that the Applicant is also involved in crime under Sections 17

and 19 of the *Protection of Children from Sexual Offences Act, 2012*.

8. Perusal of the record shows that the Applicant is arrested on 27th August 2023 and till date there is no progress in the trial and even the charge is also not framed. As per the prosecution case, there are 29 witnesses proposed to be examined by the prosecution. Thus, the trial will take a considerable time to conclude.

9. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.¹ Therefore, the Applicant is entitled for bail.

10. Although, the Applicant is entitled to be released on bail solely on the ground of delay in conducting the trial, in view of the facts and circumstances of the case stringent conditions are required to be imposed.

11. As the residence of the victim is at Pune and most of the witnesses are from District – Pune, Mr. Pathan, learned Counsel for the Applicant, after taking instructions, states that the Applicant will not reside within District – Pune and that the Applicant will reside at C/o Pankaj Bharat Gawali, Swaraj Nagar, Pakhar Sangvi, District – Latur.

12. At this stage, Ms. Bhosale, learned APP states that the victim for

¹ Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

the purpose of education is staying at Kolhapur. Mr. Pathan, learned Counsel for the Applicant, on instructions, states that the Applicant will not also enter District – Kolhapur.

13. The Applicant does not have any criminal antecedents.

14. The Applicant does not appear to be at risk of flight.

15. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

16. In view thereof, the following order:-

ORDER

- (a) The Applicant - Jameer Ismael Shaikh be released on bail in connection with C.R. No.442 of 2023 registered with the Vimantal Police Station, District – Pune on his furnishing PR. Bond of Rs.50,000/- with one or two local solvent sureties in the like amount.
- (b) The Applicant shall not enter the Pune and Kolhapur districts after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Latur Rural Police Station, District – Latur once every week i.e. on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Latur Rural Police Station, District – Latur to communicate details thereof to the Investigating Officer.

- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

17. The Bail Application is disposed of accordingly.

18. It is clarified that the Trial Court shall decide the case on its merits uninfluenced by the *prima facie* observations made in this Order.

19. This Court places on record the appreciation for the assistance rendered by Mr. Shreyas Barsawade, learned Counsel appointed to represent the interest of the Respondent No.2.

[MADHAV J. JAMDAR, J.]