

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

BAIL APPLICATION NO. 1478 OF 2024

Shrilingan Shimray Tokapor @ Shiva

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

- Ms. Sana Raees Khan, for Applicant.
- Mr. R.M. Pethe, APP for Respondent No.1.
- Mr. Dheeraj Panchange, for Respondent No.2 (appointed through Legal Aid).
- Mr. Sunil Gomare, PSI, Amboli Police Station

CORAM : MANISH PITALE, J.

DATE : 06th SEPTEMBER, 2024.

P. C. :

1. Heard, Ms. Khan, learned counsel for the applicant and Mr. Pethe, learned APP for the respondent – State as well as Mr. Panchange, learned counsel appointed to appear on behalf of respondent No.2.

2. The applicant in the present case is seeking bail as he was arrested on 17.06.2021 in connection with FIR dated 15.06.2021 bearing No.498 of 2021, registered at Police Station Amboli, Mumbai, initially for offences under Sections 363 and 354 of the Indian Penal Code (IPC) and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, (POCSO Act). Subsequently, offences under Section 376 of the IPC and Section 4 of the POCSO Act were added against the applicant.

3. The FIR was registered on the basis of the statement of the mother of the victim on 15.06.2021, pertaining to an incident alleged to have taken place on 10.06.2021. The medical examination of the victim was carried out on 16.06.2021 and her statement was recorded on 17.06.2021. After completion of investigation charge-sheet was filed and as on today, beyond framing of charge, the trial has not proceeded effectively.

4. It is brought to the notice of this Court that an earlier bail application filed on behalf of the applicant was withdrawn on 08.02.2023, when this Court reserved liberty for the applicant to renew his prayer for bail after 6 months if the trial did not substantially proceed. It is the case of the applicant that after the said order was passed by this Court on 08.02.2023, beyond framing of charges on 11.08.2023, the trial has not proceeded at all.

5. The learned counsel for the applicant submits that in the present case, the description of the incident in question by the informant does not refer to sexual intercourse between the applicant and the victim. Even the statement of the victim recorded on 17.06.2021 does not record any such sexual intercourse having taken place on the date of the incident i.e. 10.06.2021. It is only while recording history during medical examination on 16.06.2021 that there is reference to relationship between the applicant and the victim for a period about 2 years with intercourse allegedly having taken

placed between the two. It is submitted that the name of the applicant has been stated differently at different places in the charge-sheet and the documents on record, thereby creating some doubt about even the identity of the person against whom the victim has a grievance. It is submitted that there is no document showing proof of date of birth of the victim on record and her age has been ascertained on ossification test, which shows that she was more than 17 years at around the time of the incident. It is emphasized that the applicant has remained behind bars for about 3 years and 3 months and considering the fact that the trial would not be completed within a reasonable period of time, this Court may consider enlarging the applicant on bail.

6. On the other hand, learned APP has vehemently opposed the present application. He submits that the history of the victim suffering sexual abuse at the hands of the applicant is sufficiently made out by the material on record. It is further submitted that even if the ossification test is to be relied upon, the victim at the time of the incident was clearly below the age of 18 years and hence, the consent is immaterial. It is further submitted that the medical examination of the applicant shows that he was aged 30 years and a married man, thereby indicating that he lured the innocent victim into a relationship and thereby sexually abused her. It is submitted that the ingredients of the offences with which the applicant is charged are clearly made out and therefore, this Court may not show any indulgence.

7. The learned counsel appearing for respondent No.2 adopted the contentions raised by the learned APP and brought to the notice of this Court the fact that the earlier bail application had been withdrawn on 08.02.2023.

8. This Court has perused the material on record in the light of the rival submissions. Having perused the charge-sheet and the documents filed therewith, this Court is inclined to allow the present application for the following reasons :

- (i) The incident in the present case is said to have taken place on 10.06.2021, while the FIR is registered after 5 days on 15.06.2021.
- (ii) the statement of the informant i.e. the mother of the informant, which led to registration of the FIR, refers to the said incident of 10.06.2021, but nowhere describes any act of sexual intercourse between the applicant and the victim. It is perhaps for this reason that initially offences only under Sections 354 and 363 of the IPC were registered along with offences under Sections 8 and 12 of the POCSO Act. This pertained to outraging modesty of the victim and sexual assault as opposed to penetrative sexual assault.
- (iii) Even the statement of the victim recorded on 17.06.2021

does not refer to any sexual intercourse between the applicant and the victim and the description of the incident is the same as given by the informant on 15.06.2021.

- (iv) It is only in the interregnum i.e. on 16.06.2021, when the medical examination of the victim was carried out, that she gave the history of alleged relationship with the applicant for about 2 years when he had allegedly given promise of marriage and in that context there was sexual intercourse between the two. It is at this stage that the victim has claimed forceful, unconsensual peno vaginal intercourse. The medical examination report does not divulge any physical injury to the victim, although it records that the hymen was torn.
- (v) There is no document to show the date of birth of the victim, although the X-ray report refers to the fact that her age could be said to be more than 17 years, but less than 18 years. This would create some doubt about the exact age of the victim and it could be marginally below or more than the age of majority.
- (vi) The applicant has remained behind bars since 17.06.2021 i.e. for a period almost 3 years and 3 months. After the

earlier bail application was withdrawn on 08.02.2023, the only progress before the concerned Court is that the charge was framed on 11.08.2023, but there is no further progress in the trial. This indicates that the trial may not be completed within the foreseeable future.

9. For the aforesaid reasons, the present application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with FIR No.498 of 2021 registered at Amboli Police Station, dated 15.06.2021, on furnishing P.R. Bond of ₹ 50,000/- [Rupees Fifty Thousand only] with 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 for reasons to be recorded in writing;
- (C) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile numbers and residential

addresses to the Trial Court and update about the same, if there is any change.

10. Needless to say, violation of any of the aforesaid conditions may lead to cancellation of the present order.

11. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

12. The application is disposed of.

(MANISH PITALE, J.)