

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1899 OF 2024**

Firoz Aijaz Pathan	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Mr. Abdul Wahab Shaikh for applicant.

Mr. Mayur S. Sonavane, APP for respondent No.1-State.

CORAM : MANISH PITALE, J.

DATE : 31st JULY, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent No.1-State.

2. Since offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) are also registered against the applicant accused, notice was issued to respondent No.2. Office note shows that the notice was duly served on the said respondent. There is no appearance on her behalf.

3. In the present case, FIR No.104 of 2022 dated 27.02.2022 was registered against the applicant at Police Station Andheri, Mumbai for offences under Sections 363, 376(i)(n) of the Indian Penal Code, 1860 and Sections 4, 5 and 9 of the POCSO Act. The applicant was arrested on 01.03.2022 and he has remained behind bars since then.

4. The earlier bail application of the applicant was withdrawn and an order was passed by this Court (Coram: M. S. Karnik, J) on 10.10.2023 in Bail Application No.674 of 2023, granting liberty to the applicant to apply afresh, after the evidence of the victim was recorded or after six months, whichever was earlier.

5. The evidence of the victim was recorded on 02.04.2024. Copy of the deposition and cross-examination of the victim is tendered before this Court. The same is taken on record.

6. The learned counsel for the applicant submits that the victim has not supported the version of the prosecution. It is further highlighted that the victim did not consent to her medical examination even during the course of investigation and hence, there is no medical examination report of the victim on record. In these circumstances, it is submitted that this Court may consider allowing the present application.

7. On the other hand, the learned APP submitted that serious allegations have been made on the basis of which, offences even under POCSO Act have been registered against the applicant and this aspect may be taken into consideration.

8. This Court has perused the evidence of the victim recorded on 02.04.2024. Evidently, she has turned hostile and she is not supporting the version of the prosecution and in fact, the learned APP before the trial Court was constrained to cross-examine the victim and the responses are on record. It is also a matter of record that medical examination of the victim could not be conducted as she refused to give consent for the same at the time of investigation.

9. Considering the aforesaid circumstances, this Court is of the opinion that the application can be allowed.

10. In view of the above, the application is allowed in the following terms:
- (i) The applicant shall be released on bail in connection with FIR No.104 of 2022 dated 27.02.2022 registered at Police Station Andheri, Mumbai, on furnishing PR Bond of ₹ 25,000 and one or two sureties in the like amount to the satisfaction of the trial Court;
 - (ii) upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change;
 - (iii) the applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted;
 - (iv) the applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.
11. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.
12. 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.
13. The application is disposed of.

(MANISH PITALE, J)