

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2019 OF 2024**

Akil Habib Shah	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Ms. Anjali Patil a/w. Mr. Tohid Shaikh for applicant.

Mr. Tanveer Khan, APP for respondent No.1-State.

Mr. Vilas A. Tiwari for respondent No.2.

**CORAM : MANISH PITALE, J.
DATE : 31st JULY, 2024**

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. An earlier bail application filed by the applicant was withdrawn on 13.10.2023, when this Court (Coram: M. S. Karnik, J) granted liberty to the applicant to file a fresh application after the evidence of victim was recorded. This Court is informed that subsequent thereto, on 23.04.2024, the evidence of the victim was recorded.

3. In the present case, FIR No.1153 of 2019 dated 28.12.2019 was registered at Police Station Sakinaka, Mumbai for offences under Sections 363, 376(2)(i)(n) and 506(2) of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

4. A copy of the evidence of the victim recorded on 23.04.2024 is tendered by the learned counsel for the applicant and the same is taken on record. It is evident from the perusal of the same that the victim is not supporting the prosecution. In that light, the learned APP appearing before the trial Court even cross-examined the victim as she had turned hostile. A perusal of the evidence of the victim does indicate that she has not supported the version of the prosecution.

5. The learned counsel for the applicant relies upon the aforesaid evidence of the victim to contend that in these circumstances, this Court may consider granting bail to the applicant, who was arrested on 16.03.2023. The learned counsel appearing for the respondent No.2 i.e. the informant is also supporting the prayer made in the present application.

6. The learned APP has opposed the prayer in the present application, indicating that the medical evidence does support the case of the prosecution and in such circumstances, this Court may not enlarge the applicant on bail.

7. Having considered the material on record, particularly the evidence of the victim recorded on 23.04.2024, this Court finds that the victim herself has not supported the prosecution case and in that light, the applicant has made out a *prima facie* case in his favour.

8. 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.1153 of 2019 dated 28.12.2019 registered at Police Station Sakinaka, 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.

9. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

10. 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.

11. The application is disposed of.

(MANISH PITALE, J)

Priva Kambli