

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2544 OF 2024**

Sameer Sabir Momin	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Mr. Yogesh P. Mahamunkar a/w. Mr. Gautam J. Jain and Mr. Sameer Momin for applicant.

Mr. Kiran C. Shinde, APP for respondent No.1-State.

Mr. Bharat Manghani, i/b. Mr. Shahrukh Momin for respondent No.2.

Mr. Shivaji Tukaram Patil, PSI, Bhoiwada Police Station, District Thane City.

**CORAM : MANISH PITALE, J.
DATE : 25th SEPTEMBER, 2024**

P.C. :

. Heard learned counsel for the applicant, the learned APP for the respondent No.1-State and the learned counsel appearing for the respondent No.2.

2. The applicant in the present case was arrested on 28.12.2023 in connection with FIR registered on the very same day bearing No.0274 of 2023 at Bhoiwada Police Station, District Thane City for offences under Sections 376(2)(l) and 376(2)(j) 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 offences under the POCSO Act are registered against the applicant, the respondent No.2 was put to notice and she has appeared through the counsel.

3. The informant is the mother of the victim. It is alleged that on 26.12.2023, the victim i.e. 7 years old daughter of the informant, suffered

sexual abuse at the hands of the applicant, who is her uncle. It is alleged that when the victim informed her mother about the informant, the matter was taken to police and FIR was registered.

4. The learned counsel for the applicant submitted that this is a case of false implication in the backdrop of a family dispute. It is submitted that due to an ongoing family dispute, the informant caused the FIR to be registered. After inviting attention of this Court to the statement of the informant recorded on 31.12.2023 and thereafter, relying upon the medical examination report, the learned counsel for the applicant submitted that a strong *prima facie* case is made out in favour of the applicant. Reliance was also placed on an affidavit filed by the informant herself before the Sessions Court, when the second bail application of the applicant was taken up for consideration, wherein she specifically stated that due to family dispute and in a fit of rage, she had caused the FIR to be registered against the applicant. Such an affidavit of the husband of the informant i.e. the brother of the applicant, was also placed before the Sessions Court.

5. The learned APP submitted that the statement of the informant, when read with the statement of the victim recorded during the course of investigation, does make out the ingredients of the offences registered against the applicant. It is submitted that the investigation is completed and chargesheet was filed on 15.02.2024. Charges are also framed in the present case.

6. The learned counsel appearing for respondent No.2 submitted that he took specific instructions from the said respondent, when she reiterated her stand in the affidavit placed before the Sessions Court.

7. It is indeed an unfortunate situation, which *prima facie* indicates that a girl child aged only about 7 years, appears to have been used as a pawn by her own mother to level serious allegations against her brother-in-law i.e. the applicant, in the backdrop of a family dispute. Such *prima facie* opinion can be reached on the basis of the affidavit of respondent No.2 that was placed before the Sessions Court. The respondent No.2 has confirmed that she stands by the said affidavit. In the affidavit, it is stated that due to the family dispute and in a fit of rage, the FIR came to be registered.

8. A perusal of the FIR shows that the informant had approached the police, claiming that her daughter had told her about the sexual abuse inflicted by the applicant on the victim. Serious offences have been registered in the present case, including offence under Section 4 of the POCSO Act. The said offence pertains to penetrative sexual assault. But, the statement of the victim recorded on 31.12.2023, refers only to the applicant having touched the victim on her private parts. The medical examination report shows that the hymen is intact and that the vagina is non-patulous. It is also relevant to note that in the history recorded in the medical examination report, an exaggerated allegation about penetration is recorded. The aforesaid history recorded in the medical examination report and the claims made by the informant in her statement, which led to registration of FIR, *prima facie* indicate that the allegations are exaggerated, when compared with the statement of the victim herself, recorded on 31.12.2023.

9. The said factors, coupled with the stand taken by respondent No.2 in terms of the aforesaid affidavit filed before the Sessions Court, indicates a strong *prima facie* case in favour of the applicant. Hence, the application deserves to 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.0274 of 2023 at Bhoiwada Police Station, District Thane City, on furnishing PR Bond of ₹ 25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court;
 - (ii) the applicant, upon being released on bail, shall report to Bhoiwada Police Station on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial;
 - (iii) 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;
 - (iv) 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;
 - (v) 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)