

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

BAIL APPLICATION NO. 2810 OF 2024

Somnath Eknath Kasbe ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

Ms. Shilpa Kapil a/w Ravi S. Kotian, Mallika Pujari and Saritha S. i/by Pankaj Shinde for the Applicant.

Mr. Prasanna P. Malshe, APP for Respondent No.1-State.

Ms. Kanchan Pawar, appointed through Legal Aid, for Respondent No.2.

Mr. Balaji Dahiphale, P.I., Andheri Police Station.

**CORAM: MANISH PITALE, J.
DATE : 19th SEPTEMBER 2024**

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State, as also the learned counsel appointed to appear on behalf of respondent No.2.

2. The applicant has approached this Court, seeking bail as he was arrested on 16th October 2023 in connection with FIR No. 0525 of 2023 dated 16th October 2023 registered at Andheri Police Station, Mumbai, for offence under Sections 376(2), 376(2)(n), 354-D and 506 of the Indian Penal Code, 1860 (IPC) and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The informant in the present case is the mother of the

victim. It is alleged the applicant sexually abused the victim i.e. respondent No.2 in particular manner as described in the statement, leading to registration of the FIR. On the date of registration of the FIR, the statement of the victim was also recorded and her subsequent detailed statement was recorded on 20th October 2023. The statement of the victim under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was recorded on 2nd November 2023 before the Competent Magistrate. On the basis of such material, the applicant is facing prosecution for the aforesaid offences. Investigation has been completed and the charge-sheet has been filed.

4. The learned counsel for the applicant submits that in the present case, the applicant has already undergone incarceration for about 1 year. It is submitted that the applicant is 96% disabled and this is evident from the disability certificate issued by the Government of Maharashtra. The original certificate is tendered for the perusal of this Court. It is submitted that in such a physical condition, it was impossible for the applicant to have overpowered the victim to abuse her sexually.

5. Apart from this, it is submitted that even if the statements of the victim are taken into consideration and they are read with the medical examination report, it cannot be said that serious offence under Section 4 of the POCSO Act is even *prima facie* made out against the applicant. On this basis, it is submitted that this Court may grant bail to the applicant.

6. On the other hand, the learned APP has opposed the present application, submitting that serious offences are registered against the applicant in the present case. Since the victim has described the incident in detail and she has also alleged that the applicant was constantly stalking her, this Court may not show any indulgence to the applicant. It is submitted that trial can be expedited, as the list of witnesses shows that only 9 witnesses are to be examined. The learned APP further submitted that the applicant gave admission during his medical examination before the department of psychiatry of the concerned hospital that he was in a relationship with the victim and that he had indulged in sexual intercourse with her multiple times.

7. The learned counsel appointed to appear on behalf of respondent No.2, supported the contentions raised by the learned APP and opposed the prayer made in the present application.

8. This Court has considered the rival submissions in the light of the material on record.

9. It is necessary to take into consideration the disability certificate issued by the Government of Maharashtra, which shows that upon medical examination, it was found that the applicant suffers from spinal dysraphism, leading to 96% disability, further recording that the condition of the applicant is permanent and not likely to improve. The aforesaid certificate does indicate that the applicant appears to be suffering from serious physical disability

and this is a factor that can be taken into consideration, while disposing of the present application. It is relevant to note that the medical examination of the applicant itself reveals at page 60 that he has been diagnosed with erectile dysfunction with arterial insufficiency. This completely belies the recording by the department of psychiatry that the applicant himself admitted to have indulged in sexual intercourse multiple times with the victim. To that extent, the physical disability of the applicant is evident from the medical examination report of the applicant himself.

10. Apart from this, the statements given by the victim before the Police and even before the Magistrate under Section 164 of the Cr.P.C., indicates the manner in which the applicant allegedly sexually abused the victim. *Prima facie*, the description of the act of the applicant on the date of the incident, does not indicate penetrative sexual assault as defined under Section 3 of the POCSO Act. At worst, it may fit into the description of the sexual assault as defined under Section 7 of the POCSO Act, which under Section 8 thereof, is punishable with imprisonment for a period of upto 5 years. As noted hereinabove, the applicant has undergone incarceration for a period of about 1 year. It is also to be noted that the medical examination of the victim shows that her hymen was found to be intact and she suffered from no injuries. The medical opinion specifically records that there is no evidence of any vaginal penetration. Therefore, a *prima facie* case is made out by the applicant about non-applicability of Section 3 of the

POCSO Act, pertaining to penetrative sexual assault.

11. The over all physical condition of the applicant made out by the documents filed along with the application and the original disability certificate tendered for the perusal of this Court, shows that a *prima facie* case is indeed made out by the applicant in his favour to claim that the allegation of the applicant having physically overpowered the victim and sexually abused her, appear to be farfetched. There would be no purpose in keeping such a 96% disabled individual in judicial custody, during the pendency of the trial and hence, a case is made out for granting bail to the applicant.

12. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No.0525 of 2023 dated 16th October 2023 registered at Andheri Police Station, Mumbai, on furnishing P.R. Bond of ₹15,000/- and 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 by the trial Court.

- (c) During the pendency of the trial, the applicant shall not enter the jurisdiction of Andheri Police Station, Mumbai.
- (d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (e) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

13. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application is disposed of.

MANISH PITALE, J.