



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.333 OF 2024
(Shamim Khan Akhbar Pathan Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.G. Sahu, Advocate for the applicant.
Mr. U.R. Phasate, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MAY 7, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 05/01/2024 in connection with Crime No.06/2024 registered with Police Station Kapil Nagar, Nagpur for an offence punishable under Sections 354, 354-A, 354-B, 452 of the Indian Penal Code and Section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The accusation against the present applicant is on the basis of report lodged by the mother of the victim girl on an allegation that her daughter victim is aged about 10 years on the day of incident. On 31/12/2023 at about 11:30 p.m. to 12.00 p.m. the applicant who is a Scrap Vendor on the pretext of asking for water he came inside the house and outraged the modesty of the victim girl. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the involvement of the present applicant is concerned, it is false. The applicant is not at all involved in the offence. It is on the basis of misidentification his name was mentioned. Now, investigation is completed and charge-sheet is filed. Further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned Additional Public Prosecutor for the State and learned Counsel for non-applicant No.2 strongly opposed the application on the ground that the applicant who was Scrap Vendor entered into the house on the pretext of asking for water and outraged the modesty of the victim who is aged about 10 years by attempting to disrobe her and forcefully kissing her. Thus, considering the act of the present applicant, bail application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the recitals of the FIR. From the recitals of the FIR and the statement of the victim it reveals that the act of the present applicant is admittedly attracting the provisions that he has with intent to outrage the modesty of the victim touched her private part and attempted to disrobe her and thereafter forcefully kissed her. There is no reason for the informant or the victim girl to implicate the accused falsely as no such reason came forward. Considering the act of the present applicant, *prima facie* case is made out against the present applicant, but

considering the investigation is already completed and charge-sheet is filed, no purpose will be served by keeping him behind bar. The application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Shamim Khan Akhbar Pathan in connection with Crime No.06/2024 registered with Police Station Kapil Nagar, Nagpur for an offence punishable under Sections 354, 354-A, 354-B, 452 of the Indian Penal Code and Section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on his executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.
- (iii) The applicant shall not enter into the jurisdiction of Kapil Nagar, Nagpur police station till the culmination of the trial.
- (iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

6. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)