

HARSHADA H. SAWANT  
(P.A.)

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

**BAIL APPLICATION NO. 890 OF 2024**

Jayesh Rajesh Khawadia @ Jela @ Jayesh  
Rajesh Khawadiya

.. Applicant

**Versus**

State of Maharashtra & Anr.

.. Respondents

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- Mr. Harideep Singh, Advocate for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent No.1 – State.
- Mr. Ashok S. Pandire, appointed Advocate for Respondent No.2.
- PSI Manish Hajare, Dahisar Police Station present.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : FEBRUARY 25, 2025**

**P.C.:**

**1.** Heard Mr. Singh, learned Advocate for Applicant, Mr. Kulkarni, learned APP for State and Mr. Pandire, learned appointed Advocate for Respondent No.2.

**2.** This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) seeking Bail in connection with C.R. No. 1110 of 2022 registered with Dahisar Police Station for offences under Section 377 of the Indian Penal Code, 1860 (for short ‘IPC’) readwith Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). Applicant is incarcerated since 05.06.2022 i.e. 2 years 7 months and 4 days.

**3.** Briefly stated First Informant – victim aged 16 years old was friends with the present Applicant who was 19 years old at the then time. On 05.06.2022 FIR is lodged against present Applicant by the First Informant - victim alleging that two months prior at 1:00 pm while he was returning home after playing cricket with his friends, Applicant took him to a nearby closed building and sodomized him. It is thereafter alleged that again after 5 / 6 days Applicant repeated the same act with him at his aunt's house. It is stated that thereafter on 12.05.2022 First Informant – victim encountered abdominal pain and was taken to Pragati Hospital, Dahisar for treatment and thereafter on 13.05.2022 was shifted to Nair Hospital, Mumbai wherein he was suspected with Extrapulmonary Tuberculosis (TB). Thereafter on 04.06.2022 First Informant – victim disclosed the alleged two incidents to the Doctor at Nair Hospital pursuant to which the FIR was registered on 05.06.2022.

**4.** Mr. Singh, learned Advocate for Applicant would at the outset submit that Applicant is a young boy aged 22 years who has been falsely implicated in the present crime based on false and concocted allegations. He would submit that First Informant – victim was suffering from TB and various ailments since past many years though it has been stated in the FIR that in May 2022 he was diagnosed with TB. He would submit that during his treatment at Nair Hospital, First Informant – victim was operated for exploratory

laparotomy (intestinal obstruction) and 10 days thereafter on 02.07.2022 he passed away due to active respiratory disease syndrome with septic shock in the operated area and various complications. He would submit that as his parents were in dire need of funds for his treatment which was expensive they have indicted the Applicant in a false crime for extorting money from his family.

**4.1.** He would submit that even after accepting the prosecution case at the highest, it is unfathomable to believe that Applicant sodomized the victim at the the two locations mentioned by him as both locations are such that there would have been some witnesses or the other who would have seen them together, which is not so in the present case. He would submit that the witness statements placed on record by prosecution have many contradictions which create a shadow of doubt on the prosecution case. In this regard he has persuaded me to juxtapose the statement of the First Informant – victim himself recorded in the police station appended at page No.31 of the Application and the statement recorded by him during his medico-legal examination at page No.69 and see the contradictions. He has also invited my attention to the statement recorded by father of the First Informant – victim at page No.76 of the Application to substantiate his contentions regarding contradictory statements of the witnesses which weaken the prosecution case.

**4.2.** He would submit that there is an apparent delay of 2 months in lodging of the FIR. He would submit that there is no material placed on record for even *prima facie* establishing the guilt of the Applicant and that owing to the demise of First Informant – victim there is no medical evidence to corroborate the allegations any further except the statements. He would submit that Applicant has no criminal antecedents to his discredit. He would submit that investigation of the matter is completed and charge-sheet has been filed before the Trial Court however till date charges have not been framed. He would submit that the facet of long incarceration of the Applicant of 2 years 7 months and 4 days coupled with no possibility of the trial commencing in the near foreseeable future may also be considered by this Court. Hence he would urge the Court to allow the Bail Application.

**5.** Mr. Kulkarni, learned APP for State would submit that there are serious allegations against the Applicant and hence considering the gravity of the offence this Court may be cautious in allowing the Bail Application. He has drawn my attention to the statement given by witness Deepak Varondiya at page No.54 of the Application who has stated that 2 months back he had accompanied First Informant – victim to watch the cricket match and while returning from there, Applicant had called the First Informant – victim and took him near a closed building and First Informant – victim went over there and thereafter the said witness went home alone. He would submit that

this statement corroborates with the case of the First Informant – victim. He would submit that medical examination though necessary, its absence is not fatal to the prosecution case. He would submit that there is substantial material on record to corroborate the prosecution case and thereby prove the guilt of Applicant and hence at this stage Bail Application may be rejected.

**6.** Mr. Pandire, learned appointed Advocate for Respondent No.2 would adopt and support the submissions made by the learned APP and in addition would submit that Applicant is residing in the same vicinity as that of the deceased First Informant – victim and hence there is a possibility of he influencing witnesses and tampering with evidence which would prejudice the trial before Trial Court. He would urge the Court to consider the seriousness of the offence and reject the Bail Application.

**7.** With the able assistance of the learned Advocates I have perused the record of the case. Juxtaposing the statement of the First Informant – victim at page No.31 with his own narration recorded at the time of his medico-legal examination, it is seen that there are material contradictions in the same. During the medico-legal examination conducted on 09.06.2022, First Informant – victim has stated that he was sodomized by Applicant on 3 / 4 occasions in the past one year and that he informed his friends and also father about

the same. However the said narration does not find mention in his own statement recorded by the police 3 days prior i.e. on 06.06.2022. Furthermore, statement of father of the First Informant – victim at page No.46 of the Application is also contradictory as it does not mention anything about the First Informant – victim informing him about occurrence of any incident. Infact he states that he was informed by the Doctor at Nair Hospital about the alleged incident and the doctors called the police station to intimate them about the alleged incident. Hence *prima facie* there appears to be a distinct dichotomy in the prosecution case itself which relies only on the witnesses statements.

**8.** The medical examination has also not revealed existence of any signs of forcible penetration. Cause of death of the First Informant – victim as can be seen from the Report of death issued by Assistant Medical Officer of Nair Hospital at page No.75 of the Application is ‘Acute Respiratory Distress Syndrome with septic shock in an operated case of exploratory laprotomy done in view of intestinal obstruction’.

**9.** Though Applicant has taken the defence that the FIR is lodged with intention to extort money from him and his family, there is no supporting evidence placed on record by him to substantiate the said contention. Hence I need not delve into the same.

**10.** Applicant before me is a 22 year old young boy having no criminal antecedents. He is incarcerated since 2 years 7 months and 4 days. Trial has not yet commenced and even charges have not been framed. Perusal of the record shows that the prosecution case suffers from various contradictions and material on record is not sufficient to warrant further custody of the Applicant. There is no medical examination for corroboration of the alleged crime in question as admittedly the victim was suffering from various ailments for which he was taking treatment in various hospitals. Though offence under the POCSO Act has been invoked against the Applicant which is a special law having stringent provisions, that itself would not deter the Court to grant or refuse bail in order to secure the ends of justice.

**11.** Considering the above *prima facie* observations, Bail Application is allowed on the following terms:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months after his release and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial

and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

(vi) Applicant shall not reside in the jurisdiction of Dahisar Police Station till the completion of trial;

(vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time; and

(viii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of this order.

**12.** The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the

present case.

**13.** Fees of the learned Advocate Mr. Pandire appointed through legal aid to represent and espouse the cause of Respondent No.2 shall be released by the Registry of this Court within a period of one week from the date of presentation of a server copy of this order on compliance.

**14.** Bail Application is allowed and disposed.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

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HANUMANT  
SAWANT

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by HARSHADA  
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