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

BAIL APPLICATION NO. 1681 OF 2024

Shradhanand Pralhad Gurav

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Mr. Murtaza Najmi a/w. Mr. Shambhu Jha, Mr. Afsar Ansari, Mr. Suraj Pandey i/by Mr. Shambhu Jha for Applicant
- Ms. Savita Yadav, Advocate for Respondent No.1- State.
- Ms. Komal g. Sinha, Advocate (appointed) for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 21, 2025

P. C.:

1. Heard Mr. Najmi, learned Advocate for Applicant; Ms. Yadav, learned APP for State and Ms. Sinha, learned Advocate (appointed) for Respondent No. 2.

2. This is an Application under Section 439 of CrPC¹ seeking Regular Bail in connection with C.R. No.631 of 2023 registered with Malad Police Station, Mumbai for the offences punishable under Sections 323, 377 and 506 of IPC² along with Sections 4, 8 and 12 of POCSO³.

3. FIR is lodged on 20.10.2023 by mother of the victim boy who is 5 years and 4 months old, two days after the occurrence of the incident. In the FIR, it is stated that at about 02:30 p.m. on

1 Code of Criminal Procedure, 1973

2 Indian Penal Code, 1860

3 Protection of Children from Sexual offences Act, 2012

18.10.2023, the victim boy returned from school and First Informant asked him to fetch Curd (*dahi*) from the shop Ambika Kirana Store belonging to the Applicant which was a few strides away from the First Informant's house. The subject shop namely incident spot was housed in Room No.1 of Gurav Chawl in Pawan Baug Area of Malad, Mumbai. Photographs of the said shop are shown to the Court. It is seen that the shop is on the ground floor of newly constructed tower Building opening right on the Road. First Informant, her husband and her two children (boys – 5 years and 1.5 years) lived in Room No.9 of Gurav Chawl on rent. According to First Informant, the alleged incident took place in the afternoon of 18.10.2023 at about 02:30 p.m. when Applicant allegedly molested her son i.e. the victim boy and thereafter inflicted a hard slap on his face and threatening him not to disclose the alleged incident to any person. According to First Informant, the victim boy came home, handed over the curd to her and left for his tuition classes thereafter. On 18.10.2023, at night time, the victim boy had burning sensation in his rectum while passing stools and therefore First Informant applied a cream. On the next day 19.10.2023 everything was normal as usual throughout the day and First Informant states that at 08:00 p.m. in the night, she saw that her son (victim) was having difficulty in walking and therefore asked him the reason for the same. She states that her son at that time informed her

about the incident that happened on the previous day in the afternoon in the Applicant's shop when he had gone to buy curd. She thereafter informed her husband after he came home that night and they both went to Shop No.1 and questioned the Applicant about the incident on the previous day which was denied by him. Thereafter Applicant alongwith First Informant and her husband took the victim boy for treatment to Trauma Care Hospital, Jogeshwari (East) where the doctor on duty made inquiry with the victim boy and because of what the victim boy narrated to the doctor, the parties were referred to take him to BMC's Dr. R.N. Cooper Hospital. FIR was lodged on the next day and First Informant's statement was recorded on 20.10.2023. Investigation was carried out, Applicant was arrested and is in incarceration since 20.10.2023 till date.

4. By order dated 27.08.2024, this Court directed that Advocate be appointed to represent and espouse the cause of the victim and subsequently Ms. Sinha came to be appointed as Legal Aid Counsel for him.

5. Mr. Najmi, learned Advocate appears for the Applicant – Accused. He would submit that Applicant has been falsely implicated in the crime by the First Informant – Mother of the victim boy. He would submit that Applicant is running the *kirana* store Ambika Kirana Store from Room No.1 of Gurav Chawl since long. He is a family man

with no antecedents. He would submit that First Informant is a regular customer at the *kirana* store and she had substantial outstanding dues payable for the past six months which she did not pay and to avoid paying them, she framed the Applicant by using her son as the victim. He has drawn my attention to the apparent discrepancy in the statement of First Informant recorded on 20.10.2023 appended at page No.39 and the Section 164 statement of the victim boy recorded on the same day on 20.10.2023 appended at page No. 44 and would submit that if the two statements are juxtaposed and read, they do not synchronize with respect to the date of disclosure of the incident by the victim boy to his mother. He would submit that in the FIR, date of incident is 18.10.2023 and date of disclosure to First Informant by victim boy is stated to be on 19.10.2023 whereas in the Section 164 statement the victim boy has stated that he disclosed the incident to the First Informant on the night of the same day of the incident i.e. on 18.10.2023. He has persuaded me to juxtapose the statement of the First Informant on page No.42 with the answers given by the victim boy to question Nos.21 to 26 in his Section 164 statement which when read will show the aforesaid dichotomy on the face of record. He would therefore argue that the present case instituted by the First Informant is filed to frame the Applicant. He would submit that Applicant has deep roots in society, he has no antecedents, both his

sons are MBBS doctors employed with the BMC Hospital and when the First Informant and her husband approached him, he himself helped them and took the victim boy to the hospital for treatment. In view thereof considering the incarceration of the Applicant for almost 1 year and 4 months pending trial, the Court should enlarge the Applicant on bail in the facts of the present case.

6. Ms. Yadav, learned APP would vehemently oppose the Application for ground of Bail. She would submit that age of the victim boy is such that the act of Applicant cannot be pardoned. She would submit that the Section 164 statement of the victim boy clearly implicates the Applicant's act and he names the Applicant for committing the act. She would submit that considering the age of the victim, there can be discrepancy in disclosure of the incident by him which should be disregarded and the after effect of the actual act should be seen by the Court. She would submit that the medical report placed on record at page No. 76 clearly depicts that the victim boy suffered trauma due to the act of Applicant and hence, the Application deserves to be rejected considering the heinous nature of offence which is an offence against the Society at large.

7. Ms. Sinha, learned appointed Advocate for Respondent No.2 would support the submissions made by the learned APP and in addition thereto would submit that there is *prima facie* sufficient

material to show involvement of Applicant – Accused in the crime and the medical evidence in this case implicates the Applicant and supports the prosecution case. She would fairly submit that though the Medical Report states that there is no external injury, the said report also notes finding of fissures at 6 o'clock and 12 o'clock position out the anal area without any visible bleeding and these fissures are sign of assault on the victim boy. She would therefore submit that even though the doctors did not find any sign of external injury on the buttocks or anal region of the victim boy, the visibility of fissures would *prima facie* indicate occurrence of some incident at least and therefore the same needs to be considered as a result of a violent act on the victim. She has therefore sought rejection of the Application for bail.

8. I have heard the learned Advocates at the Bar and with their able assistance, perused the record of the case, the chargesheet and the Section 164 statement of the victim. *Prima facie* it is seen that there is a clear dichotomy and discrepancy in the statement of First Informant in the FIR appended at Page No. 18 and the Section 164 statement of the victim boy appended at page No.42 of the Application regarding disclosure of the alleged incident by the victim boy to First Informant. This disclosure is a crucial aspect at the outset of the happening of the alleged incident. The victim boy states that he

disclosed the incident on the same day of its occurrence at night after returning from tuition to his mother i.e. First Informant whereas First Informant in her statement categorically narrates a version and states that the victim boy disclosed the incident to her only on the following day i.e. on 19.10.2023 at 08:00 p.m. in the night. One more thing which intrigues the Court is that according to prosecution case, victim boy was slapped hard on his face after the alleged assault by Applicant and also threatened thereafter. Considering his age of 5 years 4 months when he returned back to his house and gave the curd to his mother, she has not disclosed any visible sign of discomfort with the victim boy after happening of such grievous incident which any mother have noticed or for that matter would have been disclosed by the victim boy to her during the golden hour immediately after happening of the incident. What is surprising is that at that time the First Informant did not notice anything amiss in the victim boy, neither for the next more than 24 hours thereafter until 8:00 p.m. on the next day. It is intriguing that throughout the next day also she did not find anything amiss or indifferent with the victim boy which any prudent mother would have otherwise noticed in a five year old boy. Further if the victim boy had any difficulty in walking only after 29 hours after the incident, then such difficulty ought to have been noticed in the first instance after the occurrence of the incident itself in the afternoon

of 18.10.2023 or on the same day after he returned back from tuition at night on or at anytime during the next day i.e. 19.10.2023, but the First Informant did not notice any such difficulty. This gives rise to some suspicion *prima facie*. This issue apart, the Medical Report of the boy records that there are no external injuries at all over his buttocks or the anal region. That report is on page No.80 of the Application and is dated 20.10.2023. This very report on page No.77 records that there is no oral penetration or genital handling, no trauma or physical assault, no intoxicating substances or vomiting or hematemesis observed no bleeding, no constipation or obstipation and no major ulcer. It clearly records that there is no active bleeding, though there is presence of fissure but no visible bleeding is seen. This report therefore *prima facie* rules out the allegation in the FIR.

9. I have perused the Medical Report and *prima facie* what it states does not support the prosecution case though this is my *prima facie* observation.

10. In view of my above *prima facie* observation which is borne out from the record and the dichotomy observed in the Section 164 statement of the victim as seen, I am of the opinion that Applicant's application deserves consideration. There are three more *prima facie* reasons / circumstances which impel me to consider the Bail Application of Applicant. Firstly the location of the shop is such

that it opens on a busy public road and it is such that at the alleged time of incident it cannot be ruled out that there will be seclusion and isolation, secondly no TI parade has been carried out by the prosecution to identify the person described by the victim boy as father of 'Bunty and Munna' who according to him committed the alleged offence, and the affidavit of Vijay Gupta, the next door fruit shop owner / neighbour of Applicant's shop No.1 called Ambika Kirana Stores which is appended at page No.104 of the Application which states that at the time of the incident he was in his shop next door and the said shop and the Applicant's shop are always busy during the day and no such incident has taken place. This coupled with the fact that just above the shop of the Applicant there is a CCTV camera installed by the Building and the CCTV footage from this camera is not collected or seen by the prosecution during investigation so to implicate the Applicant. This CCTV footage would have been material evidence for implication of Applicant. The location of the CCTV camera is also placed on record in the form of coloured photographs in the additional compilation report filed by the IO dated 13.02.2025 submitted at the hearing of the present case on page No. 14 of the said report.

11. I am also informed by the learned Advocate of Applicant that the First Informant and her family has pursuant to the alleged

incident vacated the subject room where they were residing on licence and are at present residing at some other location.

12. In view of my above *prima facie* observations borne out from the record, Applicant is directed to be released on bail on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- 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 noon for the first three months after release and thereafter as and when called;
- (iii) He shall not make any attempts to contact the First Informant / victim or any witnesses by any physical or electronic means and attempt to influence them or tamper with evidence in any manner;
- (iv) 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;

- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) 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
- (vii) Any infraction of the above conditions shall entail the prosecution for cancellation of this order.

13. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on the merits of the case. The trial shall be adjudicated on the basis of the evidence and in accordance with law without being influenced by any of the observations in this order which are only *prima facie* in nature.

14. Fees be paid by the High Court Legal Aid Services Authority to the learned appointed Advocate for Respondent No. 2 as per rules on production of server copy of this order.

15. Bail Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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by AJAY
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