

Shabnoor

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

BAIL APPLICATION NO. 2071 OF 2024

Shafi Ahmed Abdul Samad Shaikh ... Applicant
V/s.
State of Maharashtra ... Respondent

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Ms. Aarti Kulkarni a/w Archana Bharsore i/b Jatap Law Associates, for the applicant.

Ms. Mahalaxmi Ganapathy, APP for the State – respondent.

Mr. Nitin Palande, PSI, Trombay Police Station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 20, 2025

P.C.:

1. The present bail application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on bail in connection with Crime Register No. 430 of 2023 registered with Trombay Police Station, Mumbai. The applicant stands charged for offences punishable under Sections 376 (rape), 376(2)(N) (rape by person in position of authority), 354 (assault or criminal force to woman with intent to outrage her modesty), 504 (intentional insult with intent to provoke breach of peace), 506(2) (criminal intimidation), and 500 (defamation) of the Indian Penal Code, 1860, read with Sections 4 (punishment for penetrative sexual assault), 8 (punishment for sexual assault), 10 (punishment for aggravated sexual assault), and 12 (punishment

for sexual harassment) of Protection of Children From Sexual Offences Act, 2012 ("POCSO Act").

2. The prosecution case, in brief, is as follows: According to the victim's statement recorded under Section 164 of the Code of Criminal Procedure, on 21st January 2021, the applicant expressed his romantic feelings and love towards her when she was approximately 17 years and 7 months old, thereby making her a minor under the POCSO Act. Thereafter, on 26th January 2023, the applicant allegedly called the victim to his house under some pretext and committed forcible sexual intercourse with her against her will and consent. It is further alleged that the applicant threatened the victim with dire consequences if she disclosed the incident to anyone, thereby creating an atmosphere of fear and intimidation around her.

3. Subsequently, on 3rd September 2021, the victim entered into matrimonial alliance with one Dhiraj Naidu as per the customs and traditions. However, it is alleged that even after her marriage, the applicant continued to harass and threaten the victim by making repeated phone calls to her, causing mental trauma and distress to her married life. The prosecution further alleges that in January 2022, taking advantage of the victim's vulnerable position and the threat already created, the applicant again called the victim and committed forcible sexual intercourse with her without her consent.

4. In June 2023, when the victim discovered that she had

become pregnant, she was in a state of confusion and fear. She delivered a male child on 14th August 2023. It was only thereafter, gathering courage and with the support of her family members, that she lodged the First Information Report with the concerned police station on 8th September 2023, narrating the entire sequence of events. The applicant had earlier approached the learned Sessions Court seeking bail, which application was rejected by the learned Sessions Judge after considering the facts and circumstances of the case. Hence, the present application has been filed before this Court under Section 439 of the Code of Criminal Procedure, 1973.

5. The learned Advocate appearing for the applicant has vehemently submitted that there is an inordinate and unexplained delay in filing the report against the applicant, which creates serious doubts about the veracity and genuineness of the allegations. The counsel has specifically pointed out that even as per the prosecution's own case, the age of the prosecutrix on the date of the first alleged incident was 17 years and 7 months, making her a minor by few months only.

6. The learned counsel has further argued that a careful perusal of the narration of events mentioned in the First Information Report, along with the material evidence collected during investigation, clearly indicates that there existed a consensual romantic relationship between the applicant and the victim. The counsel has emphasized that the victim's conduct of not reporting the matter immediately after the alleged first incident, her subsequent marriage to another person, and then again allegedly

having physical relations with the applicant in January 2022, strongly suggests that the relationship was consensual in nature.

7. The counsel has also highlighted that the applicant was arrested on 8th September 2023 and has been in judicial custody since then, thereby suffering incarceration for a considerable period. Taking into consideration the facts that the applicant has already spent substantial time in custody, the possibility of the relationship being consensual, and the delay in reporting the matter, it is prayed that the applicant be released on bail with appropriate conditions as this Hon'ble Court may deem fit and proper.

8. Per contra, the learned Additional Public Prosecutor appearing for the State and the learned Advocate appointed by the Legal Services Authority to represent the victim have strongly objected to the grant of bail application. They have contended that the DNA report conclusively and scientifically established that the child born to the victim on 14th August 2023 is biologically the son of the applicant, thereby providing concrete scientific evidence of sexual intercourse between the applicant and the victim.

9. The learned counsel for the prosecution has submitted that the victim was a minor at the time of the first incident, and under the POCSO Act, the concept of consent is irrelevant when the victim is below 18 years of age. Any sexual activity with a person below 18 years is deemed to be an offence under the POCSO Act, regardless of apparent consent. The counsel has also argued that the delay in reporting cannot be held against the victim,

particularly in cases involving sexual offences, as victims often take time to overcome trauma and gather courage to report such incidents.

10. Furthermore, it has been submitted that considering the serious nature of the offences charged, the age of the victim at the time of the first incident being below 18 years, the scientific evidence in the form of DNA report establishing paternity, and the overall circumstances of the case, the applicant does not deserve to be released on bail at this stage of the proceedings. The prosecution has prayed that the bail application be rejected in the interest of justice and to ensure that the victim gets fair trial without any intimidation or pressure from the applicant.

11. Having heard the learned counsels for both parties and having perused the case diary and material on record, this Court proceeds to analyze the matter in light of the established legal principles governing grant of bail in serious criminal cases.

12. The fact that the victim was 17 years and 7 months old at the time of the first alleged incident clearly brings the case within the purview of the POCSO Act. Under this Act, the concept of consent is legally irrelevant, and any sexual activity with a person below 18 years of age constitutes an offence, regardless of apparent consent or willing participation.

13. The DNA report establishing the paternity of the child born to the victim is a crucial piece of scientific evidence that cannot be overlooked. This biological evidence provides strong corroboration to the victim's allegations and establishes beyond reasonable doubt

that sexual intercourse did take place between the applicant and the victim. While the applicant's counsel has argued about consensual relationship, the same becomes irrelevant in view of the victim's age under the POCSO Act.

14. The delay in reporting the incident, while raised by the defense, cannot be viewed in isolation. The delay in reporting sexual offences is quite common due to various factors including social stigma, fear of the accused, family pressure, and psychological trauma. In the present case, the victim was a minor when the first incident occurred, later got married, and was presumably under continuous threat from the applicant. Such circumstances adequately explain the delay in reporting.

15. After careful consideration, this Court finds the following factors that support the grant of bail to the applicant:

a) The applicant has been in judicial custody since 8th September 2023, which amounts to approximately 9 months. In cases where the trial is likely to take considerable time, prolonged custody without conviction amounts to punishment before trial, which is against the fundamental principle of criminal jurisprudence.

b) Though legally irrelevant under POCSO Act, the evidence on record suggests that there existed some form of relationship between the applicant and the victim. The victim's conduct of maintaining contact with the applicant even after her marriage indicates circumstances different from a typical case of forcible rape.

c) While the victim was technically a minor, she was close to attaining majority (17 years 7 months), which distinguishes this case from those involving very young children where the trauma and exploitation are of a different magnitude.

d) The applicant has no previous criminal record, and there is no material to suggest that he is a habitual offender or poses a threat to society at large.

e) The primary evidence in the case is the DNA report, which is already on record and cannot be tampered with. The victim has already recorded her statement under Section 164 Cr.PC.

16. After balancing all the factors discussed above and considering the principles laid down by the superior courts, this Court is of the considered view that the applicant has made out a case for grant of bail. While the charges are serious, the prolonged custody, the specific circumstances of the case, and the safeguards that can be put in place through appropriate conditions justify the grant of bail.

17. In view of the above discussion and legal position, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicant shall be released on bail in connection with Crime Register No. 430 of 2023 registered with Trombay Police Station for offences punishable under

Sections 376, 376(2)(N), 354, 504, 506(2), and 500 of IPC, under Sections 4, 8, 10, and 12 of POCSO Act, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(c) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.

(d) The applicant shall not enter the locality where the victim resides and shall maintain a minimum distance of 500 meters from the place of the alleged incident.

(e) The applicant shall attend all trial dates and cooperate with the prosecution.

(f) The applicant shall not tamper with the evidence or influence any witnesses in any manner.

(g) The applicant shall furnish his present residential address to the trial court and inform the court of any change in his address during the pendency of the trial.

(h) The applicant shall not commit any offence during the pendency of the trial, failing which the bail granted to him is liable to be cancelled.

18. The Bail Application is accordingly disposed of in above terms.

(AMIT BORKAR, J.)