

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2461 OF 2024

Nilam Vinod Dhadave

.. Applicant

Versus

The State of Maharashtra

(At the instance of Dahisar Police Station,
Mumbai) and Anr.

.. Respondents

.....

- Mr. Prashant Pandey a/w. Mr. Dinesh Jadhvani, Ms. Ridhima Mangaonkar, Mr. Pramod Sharma, Krishma Joshi and Mr. Rahul Sinkar, Mr. Nikhil Sonal, Mr. Hitesh Gupta, Mr. Pawan Tiwari, Mr. Vipul Makwana, Advocates i/by W3Legal LLP for Applicant.
- Ms. Shilpa K. Gajare – Dhumal, APP for Respondent No.1 – The State of Maharashtra.
- Mr. Ayush Kedia, Advocate for Respondent No.2.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 25, 2025

P.C.:

1. Heard Mr. Pandey, learned Advocate for Applicant; Ms. Gajare – Dhumal, learned APP for Respondent No.1 – The State of Maharashtra and Mr. Kedia, learned Advocate for Respondent No.2.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') filed by Applicant before me who is 28 years old mother seeking Bail in connection with C.R. No.904 of 2023 registered with Dahisar Marg Police Station for offences punishable and charge-sheeted under Sections 307, 377, 325, 324, 323 read with Section 34 of the Indian Penal Code, 1860 (for short '**IPC**'); Sections 4, 8 and 12 of Protection of Children from Sexual Offences

Act, 2012 (for short '**POCSO Act**') and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short '**the said Act**'))

3. At the outset Mr. Pandey would submit that there are two accused in the aforesaid crime. Accused No.1 is the partner of Applicant who is arraigned as accused No.2. He would submit that by order dated 29.01.2024, the Trial Court rejected the Bail Application filed by both the accused by a common order. That order is appended at page No.236. Present Application for bail is filed by accused No.2 only.

4. Minor victim in the present case is the son of Applicant and First Informant – Complainant who was about 5 years old in September – 2023 when the alleged incidents occurred. First Information Report (for short '**FIR**') is lodged on 03.10.2023 in respect of precursor incidents which are briefly stated hereinunder. On 25.10.2023 charges under POCSO are additionally added. Brief facts are as follows:-

4.1. Applicant and First Informant married in the year 2017 and gave birth to a son who is the victim boy on 03.06.2018. They lived in native Ratnagiri alongwith family of First Informant namely his mother. It is stated in the FIR that since 2019, Applicant used to take out frustration on the son by beating him due to disputes between her

and First Informant. *Prima facie*, this statement is unbelievable on the face of record as it is unsubstantiated. No mother can be thought of beating a one year old child as alleged.

4.2. In the FIR it is stated that Applicant and First Informant took a mutual decision to take divorce after which Applicant left the native place in Ratnagiri leaving her son in custody and care of First Informant father and came to reside in Mumbai. In Mumbai, Applicant met accused No.1 and started residing with him together. Applicant was working as a house maid / maid servant in Mumbai. Post COVID-19 Pandemic some time in May – 2023 / June – 2023, First Informant's mother informed Applicant that her son was suffering at the hands of the First - Informant as he had not been taking proper care of him as a father and therefore being a mother she should take him along with her.

4.3. Applicant alongwith her relative visited Ratnagiri in June – 2023. Record shows that there was a settlement and reconciliation arrived at between Applicant and First Informant by mutual consent on the intervention of the family members and village elders namely the Police Patil whereby First Informant agreed and allowed the Applicant to take her son alongwith her to Mumbai to provide care, support and most importantly education. Statement of village Police Patil who intervened in the reconciliation and settlement is appended at page

No.65 of the Application. It narrates the event and incidents which occurred at that time between the parties.

4.4. Though it is alleged in the FIR that in June – 2023 the Applicant came to Ratnagiri and forcibly took away her son from custody of First Informant as he was not taking proper care therefore *prima facie* is contrary to the record placed before me. Between June – 2023 and September – 2023, the minor victim son of Applicant stayed with Applicant and accused No.1 in their house with them in Mumbai. Subject FIR is filed on 04.10.2023. POCSO Sections / offences are added on 25.10.2023. There are series of events and incidents and namely 5 specific events of hospitalisation / attending a doctor's clinic in the month of September – 2023 which forms the precursor to filing of the FIR.

5. One of the submission vehemently argued by learned APP and also by the learned Advocate for the victim is that when he was taken to Mumbai by Applicant in June – 2023, he was not suffering from any medical illness or for that matter had no medical issues. Both the learned APP and learned Advocate have vehemently stressed that the medical condition which the victim boy found himself in September 2023 was on account of torture and ill-treatment meted out to him by both accused persons i.e. by his mother (Applicant before me) and her live-in partner (Accused No. 1).

5.1. It is seen that in Mumbai the victim minor son of Applicant was left in the care and custody of Accused No.1 throughout the day when Applicant used to go out for her work daily and return back by 03:30 p.m. everyday. Both learned APP and learned Advocate for First Informant – father have heavily relied upon the medical reports of the victim – boy to suggest and argue that an attempt has been made by both accused to kill the child and the present medical condition of the victim - boy was a result of the same.

6. From the record it is seen that sometime in August / September – 2023, according to accused the victim boy had a fall in the bathroom while taking his bath and suffered internal bleeding in his head and had to be admitted to Shatabdi Hospital for treatment for a few days. The CT Scan of the boy was also done at that time. The victim – boy was thereafter discharged from the said hospital. The discharge papers are placed on record alongwith the treatment received by him. Post his discharge for conducting a follow-up of the medical condition of the victim boy, both accused persons took him to the clinic of Dr. Mahesh Bajrang Kurale. Prosecution has recorded Dr. Kurale's statement which is appended at page No.46 of the Application. He has stated that he advised both accused persons to continue with the prescribed medicines considering his condition because after looking at him, the Doctor was of the opinion that he had not fully recovered from the bleeding injury which was suffered by

him.

7. It is also vehemently argued by learned Prosecutor and the learned Advocate for First Informant that this be viewed as an indication of negligence rather medical negligence on the part of both accused persons in not giving proper medical treatment to the victim – boy. However record shows that after a few days both accused persons took the victim – boy to Jai Ambe Polyclinic Nursing Home and Maternity Hospital situated at Vaishali Nagar, Dahisar, East on 10.09.2023 where he was admitted in the hospital due to seizure suffered by him, high body temperature of 104 degree Fahrenheit and he becoming unconscious due to swelling on his head. The statement of Dr. Reena Saket Yadav who attended to him is appended at page No.51 of the Application. She has stated that upon examination of the victim – boy she advised certain tests and prescribed certain medicines which were found unaffordable by Applicant due to its heavy costs and hence they took him away from that hospital.

8. The victim – boy was thereafter taken and admitted to Bharatratna Dr. Bababasaheb Ambedkar Hospital, Kandivali (for short '**BDBA Hospital**') from 10.09.2023 to 18.09.2023. The entire medical record of the said hospitalisation is placed on record. *Prima facie* it is seen that the victim – boy was treated for left subdural hemorrhage due to swelling on his left forehead and bruises on his left upper-lip.

His Medical history states that he had a fall during taking bath. Record shows that he was discharged on 18.09.2023 and taken home by Applicant but suffered a seizure and epileptic fit after 10 days and became stiff and unconscious. Therefore that day he was once taken and admitted to BDBA Hospital once again but due to his precarious medical condition he was admitted by Applicant to Wadia Hospital in Mumbai on the following day i.e. 29.09.2023. Due to his then medical condition which was critical with raised intracranial pressure he was admitted in Wadia Hospital and kept on a ventilator. A deep scald injury on his right thigh and bruises and injuries were seen on his body and his anal area.

9. On this ground learned APP and learned Advocate for First Informant have once again vehemently argued that when the victim – boy was in a healthy condition in June / July – 2023 when he departed alongwith Applicant from Ratnagiri to Mumbai, his precarious condition in September – 2023 leading to his hospitalisation due to injuries suffered by him was directly as a result of torture and harassment meted out to him by both accused persons. In support of this it is argued that medical reports issued by Wadia hospital detail the injuries suffered by the victim – boy due to internal bleeding in his brain and fracture of his collar bone. It is argued by prosecution that evidence of bruises and fissures stated in the medical report near his anal region is clearly an indication and possibility of sexual assault on

him by accused persons namely accused No.1.

10. It is seen that the victim – boy received treatment in Wadia Hospital upto 16.11.2023 and was discharged thereafter. The First Informant father has thereafter taken the victim – boy with him to Ratnagiri. It is seen that on discharge the victim – boy has been fixed with a feeding tube and it is therefore argued by prosecution that act of accused persons is grievous and injuries inflicted by them on the victim - boy are serious and the charges against them are therefore appropriate.

11. Mr. Pandey, learned Advocate appearing for Applicant would submit that grounds of arrest have not been informed to the Applicant who is mother of the victim boy. She was given the Notice under Section 41(1) of Cr.P.C. and immediately arrested thereafter within no time which is evident from page Nos.225 and 226 of the Application. He would submit that this transgression of Section 50 of the Cr.P.C. is seen on the face of record in the present case and in the recent decision of the Supreme Court delivered on 07.02.2025 in the case of *Vihaan Kumar Vs. State of Haryana and Anr.*¹, the Supreme Court has clarified that purpose of inserting Section 50A of Cr.P.C. makes it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person. The Supreme Court has held that the purpose of this is to ensure that they

¹ Appeal No.621 of 2025 arising out of SLP (Cri.) No.13320 of 2024 decided on 07.02.2025.

would be able to take immediate and prompt action to secure the release of the arrested person as permissible under the law. He would submit that neither are grounds of arrest furnished to the Applicant in writing, but they are kept blank in the arrest form appended at page No.226 of the Application.

11.1. He would submit that a marital discord between the parties is the real reason wherein the victim – boy of the parties has suffered. He would submit that Applicant is working as a house maid in Mumbai whereas First Informant – Complainant owns a flour mill in Ratnagiri. He would submit that since the year 2019, Applicant stayed separately in Mumbai with accused No.1 which is the real reason for filing the FIR and enhancing it to the extent of adding Sections of child abuse subsequent to the filing of FIR after 3 weeks. He would submit that admittedly from the record it can be seen that despite Applicant's poor and hand to mouth background, she and accused No.1 had taken her son to five separate Hospitals / clinic namely Gopika Healthcare, Shatabdi Hospital, Jai Ambe Polyclinic and BDBA Hospital and finally to Bai Jerbai Wadia Hospital for treatment which shows that Applicant left no stone unturned to provide the best possible medical care according to her capability and financial condition to him. He would submit that allegation of child assault and possibility of sexual assault over a period of time is not seen as there is no *prima facie* material to indicate complicity of the Applicant who is the mother of the child.

11.2. He would persuade the Court to consider the medical evidence in the above regard of all Medical Hospitals / Clinics and consider the fact that FIR when filed is completely silent on the issue of sexual assault and invoking the provisions of the POCSO Act much belatedly is for extraneous reasons. He would submit that prosecution has suppressed several important documents of treatment received by the child at Gopika Healthcare, Shatabdi Hospital and Bai Jerbai Wadia Hospital for reasons best known to the prosecution. He would submit that entire case of prosecution is based upon the statement of the neighbour / landlord who had overheard some noises on one fine day to conclude that those noises pertained to assault made on the victim – child by accused No.1 and relying on statement of such a chance witness without any corroborating evidence the accused persons are arrested. He would submit that on the basis of material placed before the Court *prima facie* presumption of innocence clearly prevails in favour of Applicant – the mother of the child. He would refer to decisions in the case of *Pankaj Bansal Vs. Union of India and Ors.*²; *Kapil Suresh Taak Vs. State of Maharashtra*³; *Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh*⁴ and urge the Court to allow the present Application.

12. In the above backdrop Ms. Gajare – Dhumal, learned APP

² (2024) 7 SCC 576.

³ Bail Application No.3374 of 2021 decided on 03.03.2022.

⁴ 1978 (1) SCC 240

has taken me through various statements of witnesses recorded by prosecution and appended at page Nos.46 to 56 of the Application. She would read the FIR and submit that conduct of Applicant – mother is *prima facie* evident on reading the same. She would submit that Applicant and First Informant are not divorced till date but were living separately. She would submit that Applicant lied to First Informant's mother that she was living with her parents in Mumbai but in reality she was living with her friend Accused No.1. She would submit that when she took custody of the victim boy i.e. her son in June – 2023 from First Informant and brought him to Mumbai, he was a healthy child and it is therefore the Applicant who is directly responsible for the present medical condition of the child because she failed and neglected to provide proper care and support to him. She would submit that Applicant did not allow First Informant – father to meet the child when he was admitted to Wadia Hospital and she informed him that his condition was better. First Informant could not see the child as he did not have a pass to enter the Hospital when he had come to see him.

12.1. She would submit that Applicant being a mother failed to inform about the various injuries suffered by the child to the First Informant, she did not give any intimation about the child's medical status to his father i.e. First Informant, she did not respond to his phone call made by First Informant on 29.09.2023 and it is only on

30.09.2023 she informed First Informant that condition of the child was precarious. She would submit that from the above acts, conduct of Applicant is seen to be cruel and therefore she is disentitled for bail. She has heavily relied upon witness / doctors' statements appended at page Nos.46 and 51 of the Application to contend that when the said statements are read it is *prima facie* evident that there is negligence on Applicant's part as a parent. She would rely upon medical papers of Wadia Hospital which state that possibility of sexual assault cannot be ruled out and would refer to the non-accidental injury i.e. scald injury suffered by the victim – boy on his right thigh described at page No.116 of the Application and contend that Applicant alongwith accused No.1 made an attempt to cause him harm and therefore the bail Application be rejected.

13. Mr. Kedia , learned appointed advocate for Respondent No.2 – First Informant would adopt the submissions made by learned prosecutor and in addition thereto would submit that the present critical condition of victim – boy after his discharge from Wadia Hospital would have to be looked at from the perspective of his healthy status when he was brought from Ratnagiri to Mumbai by Applicant. He would submit that one of the prime reason for bringing the boy to Mumbai was for admitting him in school i.e. for his education which was not done by the Applicant – mother. He would submit that during July and August – 2023, there is a good deal of probability that the

victim boy was starved and not properly taken care of and in the process tortured leading to his malnourished and malnourished condition when he was admitted to Wadia Hospital. He would submit that Applicant had to give a high-risk consent which is appended on page No.218 of the Application due to the precarious rather grievous collar bone fracture injury suffered by the victim – boy and that could only be due to torture meted out to him by both the Accused persons. He would submit that the entire perspective of the present case for bail is within a narrow and concised timeline between June and September – 2023 from the victim – boy being healthy in June, 2023 and when admitted to Wadia Hospital he was kept on ventilator in September, 2023.

13.1. He would refer to and rely upon following four decisions in support of his propositions:-

- (i) *Kusa and Others Vs. State of Orissa*⁵;
- (ii) *Anil Kumar Yadav Vs. State (NCT of Delhi) and Another and other connected matters*⁶;
- (iii) *State of Orissa Vs. Mahimananda Mishra and other connected matter*⁷;
- (iv) *Vicky Sunil Patil Vs. State of Maharashtra and Anr.*⁸.

14. I have heard Mr. Pandey, learned Advocate for Applicant;

⁵ (1980) 2 Supreme Court Cases 207.

⁶ (2018) 12 Supreme Court Cases 129.

⁷ (2018) 10 Supreme Court Cases 516.

⁸ Bail Application No.5134 of 2024 dated 12.02.2025.

Ms. Gajare – Dhumal, learned APP for Respondent No.1 and Mr. Kedia, learned Advocate for Respondent No.2 and perused the record of the present case with their able assistance. Submissions made by them have received due consideration of this Court.

15. It is *prima facie* seen that Applicant is mother of the victim – boy child. She was issued Notice under Section 41(1) of Cr.P.C. dated 04.10.2023 which is appended at page No.225 of the Application by the prosecution. She was arrested on 04.10.2023 at 10:29 am. The time of giving Notice under Section 41(1) of Cr.P.C. for inquiry is not stated on the notice. It appears that *prima facie* she was handed the notice dated 04.10.2023 and immediately arrested which is apparent from the Arrest / Court surrender form appended at page No.226. Provisions of Section 41 of Cr.P.C. are such that the Police may arrest without warrant if the Police Officer is satisfied that such arrest is necessary and the Police Officer shall record while making such arrest his reasons in writing. In the arrest form in column No.8 which is blank, *inter alia*, it pertains to the Applicant being informed of the grounds of arrest and her legal rights contemplated under Section 50 of the Cr.P.C. There is *prima facie* transgression of the said provisions namely Section 50A of Cr.P.C. by the prosecution in so far as the arrest of Applicant – mother of victim – boy is concerned, neither there are reasons or statements recorded by the Police Officer placed on record thereby violating the fundamental right of Applicant – woman who is

the mother of victim – boy child which are guaranteed to her under Articles 21 and 22 of the Constitution of India.

16. That apart on merits it is seen that statement of Police Patil – Dattaram Shantram Mistry appended at page No.65 of the Application *prima facie* corroborates with the Applicant's defence. When the said statement is read it is seen that the minor son was himself parted custody with by First Informant father and his family to Applicant – mother in June – 2023 by mutual consent due to circumstances stated in the said statement. It is *prima facie* seen that FIR is filed by First Informant for offences under 307, 325, 324, 323 read with Section 34 and Section 75 of the said Act on 04.10.2023. However, Section 377 of IPC and offences under POCSO Act are added subsequently 25.10.2023. It is *prima facie* evident from record that there appears to be a matrimonial dispute between the parties due to marital discord escalated by the Applicant – wife staying with Accused No.1 since 2019 onwards of which the victim boy i.e. her son becoming a scapegoat and suffering.

17. On the issue of medical records which is argued heavily by both sides, *prima facie* there is substantial material placed in the charge-sheet with respect to the medical condition of victim boy. It is *prima facie* seen that the medical report on page No.186 of the Application would show that the victim boy suffers from epilepsy,

regular seizures, is malnourished and anaemic. It is *prima facie* borne out from the record that prior to victim – boy being admitted to Bai Jerbai Wadia Hospital he was taken by Applicant and the Accused No.1 initially to Gopika Healthcare, Shatabdi Healthcare, Jai Ambe Polyclinic, BDBA Hospital for opinion and treatment. *Prima facie* this shows that Applicant – mother has taken trouble to provide care and support rather medical care to the child which is suggestive from the various medical records placed before the Court. The most crucial issue is that none of the Hospitals / medical centres where the victim – boy was taken for treatment and / or consultaion have at any time opined that there was an alleged sexual assault on the boy. It is only in the medical record of Wadia Hospital after the victim boy is admitted and upon his examination it is stated that there is peri anal scar / anal fissure near the anus. The said report states that possibility of sexual assault cannot be ruled out. There is nothing more than this what is stated. There are no notes of examination of any child sexual abuse placed on record.

18. Therefore once the minor child victim has undergone examination and treatment through doctors at four different Hospitals prior to been admitted in Wadia Hosptial who have not found anything relating to sexual assault, merely on the basis of observation of peri anal scar or anal fissure present near the anal area without substantiation by an appropriate report rather an appropriate medical

report cannot be *prima facie* understood to be a case of child sexual abuse.

19. What is pertinent to note is that the child in the present case suffers from anaemia and malnourishment which is evident from the various medical reports on record. Record also shows that peri anal scar in children is most often caused by constipation and the passage of hard or large stools and anal fissures are also caused as a result of the same which cause pain to the child during passing of stools.

20. At this stage I do not wish to delve into the depth of the submissions as the trial will determine the complicity of the Accused persons. From the record of the case and *prima facie* observations hereinabove, Applicant - mother of the victim boy has made out a case for bail.

21. The Bail Application stands allowed 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.15,000/- with one or more sureties in the like amount. Applicant be released on provisional cash bail of Rs.15,000/- and she is permitted to give the sureties within a period of 8 weeks after her release on bail;

- (ii) Applicant shall report to the Investigating Officer of concerned Police Station 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 she 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 keep the Investigating Officer informed of her current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of this order.

22. 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.

23. Fees of the learned Advocate Mr. Ayush Kedia 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 and on compliance.

24. Bail Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

25. After the order is pronounced in the Court, learned APP would request the order to be kept in abeyance. Considering the facts in the present case and reasons given in the order, request made by the learned APP stands rejected.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date: 2025.02.25
12:52:47 +0530