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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2984 OF 2024

Avdhesh Shivnath Dubey

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondent

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- Mr. Ram U. Singh, Advocate for Applicant
- Mr. Mayur Sonavane, APP for Respondent-State
- Ms. Persis Sindhra, Advocate for Respondent No.2-First Informant
- Mr. S.L. Doke, PSI - Borivali Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2025

P. C.:

1. Heard Mr. Singh, Advocate for Applicant; Mr. Sonavane, APP for Respondent-State and Ms. Sindhra, Advocate for Respondent No.2-First Informant
2. This Applicant seeks bail in Special (POCSO) Crime No. 579 of 2023, registered with Borivali Police Station.
3. The Applicant, Mr. Avdhesh Dubey is employed as a watchman in Building No.26A Govind Nagar Co-op. Housing Society, Soadawala lane road, Shivajinagar, Borivali (West), Mumbai. The above address is also incidentally the place of incident.
4. The Applicant seeks release on Bail in Crime No. 531 of 2023 registered with the Borivali Police Station for offences punishable

under Section 376AB of IPC r/w sections 4, 8, and 12 of POCSO Act, 2012. Applicant before me is one Mr Avadhesh Dubey. Six (6) months prior to August 2023, Applicant married the grandmother of the victim and started residing with her in her house at Panchashil Nagar, Borivali, Mumbai. Complainant is the mother of the victim. Victim is a minor girl child aged 5 years old.

5. On 30.08.2023, since Complainant had to go for work early the next day she left the victim and her younger brother to be cared for by her mother at her house in Panchashil Nagar, Borivali. On the following day after finishing her work on 31.08.2023, when the Complainant brought the victim back to her house, she was silent and when asked as to what she wanted, she stated that she wanted to sleep. At that time Complainant took her for urination, that is when victim complained of having pain while passing urine. Complainant thought that victim must have eaten something which is why she would have complained about the pain. Hence she ignored the incident.

6. Thereafter on 01.09.2023, the Complainant once again dropped the victim and her younger brother at 6:00 a.m. in the morning at her mother's place and went for her work. It is stated in the FIR that at that time, since the mother of Complainant was also doing housemaid duties, she kept the victim and her younger brother in the custody of

the Applicant at his work place in Govind Nagar Co-op. Housing Society, where he was working as a watchman. The mother of Complainant thereafter collected them at 1 p.m. and took them to her house. When the Complainant collected them once again at night on 01.09.2023, the victim once again narrated her uneasiness to her. The Complainant thought that it would be due to something which the victim may have consumed on that day at her mother's house.

7. Thereafter on 02.09.2023, in the morning at about 07.45 a.m. the victim once again complained to the Complainant about the abdominal pain during passing of urine and at that time when the Complainant told her that she will look into it, that is when the victim got annoyed and in fit of anger told her that the Applicant whom she addresses as 'Dubey uncle' has committed four acts with her on her body that are stated in the FIR. At that time Complainant was shocked and she immediately took cognizance but since she was at her employer's house and her employer was out of station in Bangalore, she waited until the next day to inform her husband. Thereafter on 03.09.2023, the victim narrated the entire episode that happened with her to the employer of the Complainant in Complainant's presence.

8. The complainant immediately approached her mother and informed her about the incidents and then persuaded her to come with her to lodge a complaint. Her mother informed her that the victim and

her brother were in Applicant's custody at his work place on 31.08.2023 from morning 10:30 till 8:30 p.m. in the night. In view of the above incident the FIR was lodged on 04.09.2023. The incident in question has occurred twice on 31.08.2023 and 01.09.2023 until the date of filing of FIR on 04.09.2023.

9. Mr. Singh, learned Advocate for Applicant, would vehemently argue and submit that Applicant had been falsely implicated and the incident is a mere allegation to take revenge on the Applicant. Nothing more has been stated by him. He would submit that Applicant is incarcerated since 04.09.2023 and his personal liberty is affected. He would submit that he is the only bread earner in the family and the victim has been used maliciously by the First-Informant.

10. In the above facts it is seen that victim is a 5 years old minor girl child. Record shows that she has been lured by the Applicant by offering her a chocolate. The learned prosecutor, Mr. Sonavane has drawn my attention to the medical evidence appended at page No. 49 onwards. At page No. 53 in paragraph No. 18, Medico-Legal Examination Report of Sexual Violence prepared by the examining doctor at Dr. R. N. Cooper Hospital, Mumbai, states that on examination of the organs it is observed that there is fresh hymeneal tear. The clinical finding in paragraph No. 22 states that the genital evidence of victim shows a hymeneal tear. I have perused the said

medical record and *prima facie* it corroborates the statement of incidents in the FIR.

11. In the further confidential forensic report appended at page No. 64 dated 05.09.2023, it shows that the Applicant is a perfectly normal and capable person. This report is submitted by the Department of Forensic Medicine and Toxicology, at Dr. R.N. Cooper Hospital, Vile Parle (West), Mumbai, I have perused the same.

12. The chargesheet is filed on 04.09.2023, under Section 173 of Code of Criminal Procedure, 1973 (for short "**Cr.PC**") and the said crime has been filed and is appended at page No. 12 of the paper book as Exhibit: "A".

13. The Applicant preferred Bail Application below Exhibit-4 before the Court of Special Judge (POCSO) which came to be rejected by order dated: 03.04.2024 appended at running page No. 97 of the paper book as Exhibit: "B".

14. Being aggrieved by the said order of rejection Applicant preferred present Criminal Bail Application.

15. Mr. Singh would further submit that the Applicant is a Senior Citizen and hence must be set at liberty.

15.1. He would submit that the offense is alleged to have taken place at his workplace and hence it is inconceivable that there are no witnesses to the incident.

16. Mr. Sonavane, learned APP, would submit that the nature of offense is serious and the Applicant by virtue of being related to the Victim through her grandmother six months before the incidents in question, he may tamper with the evidence or influence witness of the incident and hence should not be set at liberty as the act is against a minor girl child aged 5 years old.

17. In view of the above it is seen that victim has suffered immensely and she has been taken to a psychiatrist and is undergoing counseling. This shows that victim is still in trauma. The allegation against the Applicant are extremely serious and possibility of him pressuring victim's grandmother who is his wife cannot be ruled out considering the gravity of offence and the proximity of the relationship between the Applicant with grandmother of the victim.

18. Hence, I am not inclined to allow the present Application. Application is dismissed.

[MILIND N. JADHAV, J.]

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