HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3481 OF 2024

Bharat Prakash Chohan .. Applicant

Versus

The State of Maharashtra and Anr .. Respondents

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- Ms. Anjali Patil a/w Tohid Shaikh, Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent No. 1 – State of Maharashtra.
- Ms. Kavisha Khanna, Advocate (appointed) for Respondent No. 2
- API – Anita Hodage, Kurar Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2025

P.C.:

1. Heard Ms. Patil, learned Advocate for Applicant; Mr. Karmkar, learned APP for Respondent No.1 - State of Maharashtra and Ms. Khanna, learned Advocate for Respondent No.2 appointed through legal aid.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short **'Cr.P.C.'**) seeking Bail in connection with First Information Report No. 118 of 2024 registered with Kurar Police Station for offence punishable under Sections 376(2)(D), 506(2) of Indian Penal Code, 1860 and Sections 4, 6, 10 and 12 of Protection of Children from Sexual Offences Act, 20212 (for short **'POCSO Act'**).

3. The Applicant in the present case is the step father of the

Respondent No. 2 prosecutrix, aged 17 years old. FIR is filed on 12.02.2024 by the First Informant – prosecutrix alleging that sometime in November 2021 when she was alone at home and her sister was playing outside in the evening between 6 p.m. and 8 p.m., Applicant i.e. her step - father came back from work and molested her and outraged her modesty. She has stated that she was physically assaulted and threatened by Applicant from disclosing the incident to her mother or any other person. She has then alleged that from that date and incident onwards every 2-3 days the Applicant established physical relationship with her until the FIR is filed on 12.02.2024.

4. She has stated that in April 2022 she disclosed the incidents to her younger sister who was 15 years old at that time but her younger sister informed her that since December 2021 the Applicant was also outraging her modesty repeatedly. She has stated in the FIR that despite this she did not disclose the incidents to any person. Then she has stated that on 12.02.2024 for the first time she disclosed the incidents occurring with her and her sister perpetrated by the Applicant – her step father to a social worker in their area.

5. FIR was lodged on the same date. Besides the above statement there is nothing else stated in the FIR. Prosecution has recorded the spot panchanama of the room where the alleged incidents between November 2021 and February 2024 have been alleged to have

taken place with the prosecutrix and her sister. The said room is a 10 x 12 ft. room in a slum area in Shivaji Nagar, Kurar village, Malad. It is seen that the location of the place of incident is a densely populated slum.

6. Prosecution has recorded the statement of the mother of prosecutrix on the following day, however there is a material contradiction in what the mother has stated *qua* the statement of prosecutrix. The mother has stated that her elder daughter – prosecutrix informed her about the incidents at about 8:00 p.m. on 12.02.2024 whereas in the FIR prosecutrix has not mentioned about informing her mother at all. The statement of the younger sister of prosecutrix is recorded by the prosecution however it is not appended to the Application, neither produced on record by the prosecution.

7. Intriguing fact is that the mother of prosecutrix in her statement has not stated anything about the observation of the behaviour and demeanor of prosecutrix and her sister about the alleged incidents over a period of more than 2 years 3 months when admittedly she used to spend the entire day with them. Record shows that Applicant was a rickshaw driver and he used to ply his rickshaw during the day from morning to evening and return back home thereafter. He was also a compulsive alcoholic.

8. The learned prosecutor has placed before the Court

statements of the prosecutrix and her younger sister recorded during their Medico – Legal Examination after lodging the FIR. There once again the prosecutrix has stated that she was subjected to assault by the Applicant. However in the statement of the younger sister an incorrect period of the dates of assault is stated. Medical Examination Report of both, the prosecutrix and her sister *prima facie* appears to be inconclusive as it categorically notes that there is no injury whatsoever. The reason being time lapse as stated therein. This is a specific observation with respect to prosecutrix as well as her younger sister. However it is stated that time since the last incident is more than 2-3 months in both the Reports, therefore *prima facie* the statement in the FIR becomes a suspect.

9. Age of the prosecutrix and her younger sister who both are studying in school is that of an understanding age. It is borne out from the record that the mother was working abroad in the Gulf country and she returned back to India in 2020 and got married to the Applicant in 2021 in Bangalore. Thereafter it is stated that the mother with her two daughters moved alongwith Applicant to Mumbai. What is *prima facie* borne out from the record is that despite the specific allegation by both daughters against the Applicant having unprotected physical relationship with them repeatedly over a period of every 2-3 days for more than 2 years, there was nothing untoward or unusual noticed by their own mother neither they required any medical assitance during

that period.

10. However in the medico-legal statement it is categorically noted that in respect of both the sisters the date of the last incident was more than 2-3 months prior as informed by them. The narration of the past history given by the prosecutrix and her mother is incoherent with the statement recorded by the Department of Psychiatry when the Applicant was examined. Though prosecution is relying on the said statement which is appended at page no. 77 also but what is seen from the said statement is that Applicant has known the prosecutrix since the past 14 years. He has stated that prosecutrix used to stay in Udipi with her grandmother until 2021 whereas mother of prosecutrix was his live in partner staying with him in Mumbai since their marriage. He has stated that in 2021 the prosecutrix's grandmother was not in a position to take care of her and sent her to Mumbai to live with them. Thus even with respect to the past history narrated by either side there is discrepancy.

11. From the record it is borne out that Applicant and mother of prosecutrix got married in 2019. It was a second marriage for both of them. Then she went to work abroad in 2019 and returned back to India in 2021 at that time the prosecutrix was sent by her grandmother to reside with them. According to the Applicant since he was extremely strict with the prosecutrix and her sister with respect to their conduct

and did not allow them to go out with boys and have late nights, the prosecutrix has framed the Applicant alongwith the help of a local social worker. What is *prima facie* seen in the present case is that the tenure of the incidents alleged ranges over a period of more than 2 years 3 months.

12. What is alleged is multiple repeated incidents but what is intriguing is that for such a long period of time the behaviour, demenour and conduct of the prosecutrix and her sister has gone unnoticed completely by their own mother. Such a long delay and tenure of multiple incidents over a period of 2 years 3 months can undoubtedly lead to trauma which is absent in the present case and therefore such *prima facie* delay points out to the probability that there is something more sinister than what meets the eye.

13. The issue relating to mother of prosecutrix not having taken divorce from her first husband is also brought to the fore by the Applicant. The birth certificates of prosecutrix and her sister are in Kannada language issued by the Chief Registrar of Birth and Death, Government of Karnataka and they are appended at page Nos. 28 and 29. The date of birth stated in those certificates is in English and therefore it can be deciphered.

14. *Prima facie* from the above delineated facts and the dichotomy in the statements recorded qua the prosecution case and the

long tenure of the incidents in question as noted above, the timeline *prima facie* is inexplicable and raises a serious doubt although delay in filing the FIR would not be fatal to the case of prosecution, the circumstances for the delay have to be cogent.

15. However in the present case *prima facie* the circumstances are incoherent and do not appear to be cogent and convincing if the above timeline is seen. Such *prima facie* facts over a long period of time clearly tilt the balance in favour of the Applicant at this *prima facie* stage.

16. In view of the above *prima facie* observations from the record made available before me, the Applicant is directed to be released on bail subject to 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 is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(vi) 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;

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

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

(ix) In case of any infraction of the above conditions and / or

two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

17. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

18. Fees of the learned Advocate Ms. Khanna, learned Advocate 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.

19. Bail Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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