

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

CRIMINAL BAIL APPLICATION NO. 3521 OF 2024

Arvind Shivbachchan Prajapati ...Applicant

Versus

The State of Maharashtra And Anr. ...Respondents

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Mr. Abhijeet A. Desai a/w Ms. Daksha P, Mr. Karan G. Mr. Vinay Singh, Ms. Mohini R., Ms. Sanchita Sontakke, Mr. Digvijay Kachare, Advocate for the Applicant.

Mr. Mohammad Mulla for the Respondent No.2.

Mr. S. S. Chaudhary A.P.P. for the Respondent No.1 – State.

Mr. A.G. Pawar (A.P.I.) Wakad Police Station, Pimpri Chinchwad, present.

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CORAM : N. R. BORKAR, J.

DATE : 6th FEBRUARY, 2025

P.C.:

1. This is an application for regular bail.
2. The applicant came to be arrested in Crime No. 48 of 2023 registered at Wakad Police Station, District : Pune, for the offences punishable under Sections 363 and 376 of the Indian Penal Code and Section 4(2) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

3. The allegations against the applicant are of kidnapping and penetrative sexual assault.

4. I have heard the learned counsel for the applicant, learned A.P.P. for the Respondent No.1-State and the learned counsel for the Respondent No.2-victim.

5. The learned counsel for the applicant submits that there was a love affair between the applicant and the victim. It is submitted that after the alleged elopement, they stayed at the house of the witness Salim Khan. It is submitted that the statement of said Salim Khan belies the prosecution case of penetrative sexual assault as he has stated that prosecutrix on that day slept in the room of his younger sister and therefore possibility of making the said allegations by the victim under some coercion cannot be ruled out. It is submitted that the applicant is in jail for two years and the trial is still at the stage of framing of charge. The learned counsel for the applicant submits that this Court in similar circumstances has granted bail and in support of it, has relied upon the orders passed by this Court in the case of *Suraj S. Paithankar Vs. The State of*

Maharashtra¹ and Imran Iqbal Shaikh Vs. The State of Maharashtra and Anr.²

6. On the other hand, the learned A.P.P. for the Respondent No.1-State and the learned counsel for the Respondent No.2/victim submit that at the time of alleged incident the applicant was married. It is submitted that at the relevant time the victim was aged about 15 years and 5 months. It is submitted that considering the nature of offence, the applicant may not be released on bail.

7. This Court in the case of ***Imran Iqbal Shaikh Vs. The State of Maharashtra and Anr. (supra)*** has observed thus:

“4. It is true that the victim is a child within the meaning of Section 2(d) of the POCSO Act. The Applicant was also a young boy of 22 years of age at the time of the incident. The statement of the first informant prima facie indicates that the relationship was consensual. It needs to be noted that the POCSO act has been enacted to protect children from offences of sexual assault, sexual harassment etc., and contains stringent penal provisions as to safeguard the interest and the well being of the children. The object is certainly not to punish minors in romantic or consensual relationship and brand them as criminals.”

8. It appears from the material in the charge-sheet that there was a love affair between the applicant and the victim.

¹ 2020 SCC OnLine Bom 11696

² 2023 SCC OnLine Bom 1040

The material in the charge-sheet in the form of the statement of the sister of the applicant that applicant was married, *prima facie*, appears to be hearsay. Considering the over all facts and circumstances of the case, I am inclined to release the applicant on bail.

ORDER

- (i) Criminal Bail Application is allowed;
- (ii) The applicant is directed to be released on bail in connection with Crime No. 48 of 2023 registered at Wakad Police Station, District : Pune, for the offences punishable under Sections 363 and 376 of the Indian Penal Code and Section 4(2) of the POCSO Act on executing PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (iii) The applicant shall attend the concerned Police Station once in a month on first Saturday between 11:00 a.m. to 1:00 p.m. till conclusion of trial;
- (iv) Application stands disposed of accordingly.

9. Needless to mention that the trial Court shall decide the case on it's own merits without being influenced by the observations made in this order.

(N. R. BORKAR, J.)