

Ajay

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

CRIMINAL BAIL APPLICATION NO. 3673 OF 2024

Gufran Niyaz Khan

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

.....

- Ms. Pooja Jadhav, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for Respondent No.1 – State.
- Mr. Mufeez Shakeel Ansari, Advocate for Respondent No.2 through VC.

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 20, 2025.

P.C.:

1. Heard Ms. Jadhav, learned Advocate for Applicant; Ms. Ganapathy, learned APP for Respondent No.1 – State and Mr. Ansari, learned Advocate for Respondent No.2 through VC.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.672 of 2023 registered with Mankhurd Police Station for offences punishable under Sections 376(2)(n), 376 of Indian Penal Code, 1860 (for short '**IPC**') and Sections 4, 5(l), 5(n), 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**').

3. First Informant – Complainant is the victim herself who is step-daughter of the Applicant. Applicant was arrested on 18.12.2023 and is in incarceration since then. According to prosecution case and the complaint filed by prosecutrix – victim appended at page No.32 of the Application, she has stated that some time in the summer month and on about 10.05.2017 in the afternoon at 02:00 p.m. when her mother had gone out for work the Applicant's step-father and she were alone in the house and at that time the Applicant bolted the latch of the door from inside and outraged her modesty.

4. She has stated that thereafter she kept quite because of the threat given by the Applicant of harming her mother. Thereafter there is a long quietus and the second incident is alleged immediately prior to the filing of the FIR on 18.12.2023. The second incident which the Applicant refers to is of 08.09.2023 i.e. three months prior to the filing of FIR. She has stated that after the incident which occurred in 2017, Applicant has pursuant to 08.09.2023 and thereafter repeatedly established physical relationship with her whenever she was alone in the house. No specific details whatsoever are given except for stating so. The issue becomes critical because the Applicant got married on 26.11.2023 and the FIR is thereafter filed on 18.12.2023.

5. *Prima facie* on the basis of the aforesaid two incidents second one being without any details but as stated it has been done

repeatedly, the FIR is filed. This Court is aware about the provisions of Section 29 of the POCSO Act. It is not oblivious to the said provisions which contains a legislative mandate that the Court shall presume commission of offences by Accused unless the contrary is proved *prima facie*. Even otherwise mere delay in rejecting the matters where assault is concerned especially in the cases of sexual assault on a minor girl is immaterial as it would not be fatal to the prosecution case. However, in the present case as delineated above the allegation of the offence under POCSO Act dates back to the year 2017 and the FIR is filed in the year 2023 when prosecutrix has married. *Prima facie*, the delay is humongous. No complaint was filed prior to filing of the present FIR. The statutory presumption under Section 29 of the POCSO Act does not mean that the prosecution version has to be accepted as gospel truth in every case. The presumption does not mean that Court cannot take into consideration the facts of the present case. The presumption would come into play only when prosecution is able to bring on record facts to form foundation for presumption. Otherwise all that prosecution would be required is to raise some allegation against an Accused and to claim that the case projected by the prosecution is true. The Court must be therefore be on guard to see that Application of presumption without advertng to essential facts shall not lead to injustice. *Prima facie* in the present case, it is seen that prosecutrix's mother and the Applicant father both had a failed earlier marriage and

that siblings of prosecutrix, prosecutrix herself and children of Applicant from his first marriage were all residing together for several years and since prior to 2017. *Prima facie*, in view of the aforementioned facts and more specifically the facts relating to delay and that marriage of prosecutrix one month prior to filing of the complaint / FIR raises suspicion and doubt. Hence Applicant has made out case for grant of bail.

6. Hence, Bail Application is allowed subject to 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 two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.15,000/- 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 make any attempt to re-associate with the victim girl in any manner either through any device or in-person
- (ix) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (x) 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.

7. 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.

8. Fees of the learned Advocate Mr. Ansari, 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.

9. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2025.03.20
20:47:07 +0530