

Rajput PR

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

BAIL APPLICATION NO.3754 OF 2024

Mohammad Irshad Mohd. Mumtaz Shaikh	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Ms.Heena Mistry, for the Applicant.
Mr Kiran C. Shinde, APP for the Respondent - State.
Ms Priyanka Chavan, for the Respondent No.2.

CORAM DR. NEELA GOKHALE, J.
DATED: 10TH SEPTEMBER 2025

PC:-

1. This is an application through jail. The Applicant seeks his release on bail in connection with FIR No.1238/2022 dated 25th June, 2022 registered with the Dahisar Police Station, Mumbai for the offences punishable under Sections 363 and 377 of the Indian Penal Code, 1860 and Section 4, 6, 8 and 12 of the POCSO.

2. Heard Ms.Heena Mistry, learned counsel appointed through legal aid to represent the Applicant and Mr.Kiran C. Shinde, learned APP representing the State. Ms.

Priyanka Chavan, learned counsel, appointed to represent the Respondent No.2 / victim appeared for him.

3. According to the prosecution the Applicant, residing at Shastri Nagar slum area, Bhayandar (W) Thane was working as a mechanic. He lured the victim namely a boy of 10 years of age to work with him. The minor boy worked with him for about 2 months. It is alleged by the prosecution that the Applicant forced the victim boy to have unnatural sex with him. Thereafter, he took the boy to a temple and tied a black thread on his wrist and told him that now they are married to each other and as such the boy should not run away from him. It is also alleged that he has committed aggravated sexual assault on the minor boy on a number of occasions. The complaint was made by the boy's father and accordingly the crime was registered.

4. Ms.Mistry submitted that the Applicant has suffered incarceration for as many as 3 years. He also points out that the medical report of the minor boy does not show

any external injury nor any bleeding. He also relies on the statement made by the victim to the doctor to suggest that the minor boy has not narrated all the instances appearing in the statement given to the police as well as in his statement recorded under Section 164 of the Cr.PC. He thus urges the Court to allow the Application and enlarge the Applicant on bail.

5. Per contra, the learned APP and Ms. Chavan submit that the minor victim is nearly 10 years of age and the Applicant is aged 22 years. The offence is serious and the boy has suffered tremendous trauma. Ms. Chavan has taken me through the medical report which specifically states that there is considerable tenderness in the boy's private part. She has also taken me through his statement given to the Magistrate under Section 164 of the Cr.PC. The boy has narrated his ordeal in detail. The said statement is in consonance with the statement given to the doctor as well as the police. There is no discrepancy in the same. She also submits that charges are framed on 23rd July, 2025 and one witness has already been

examined. There are in all only 12 witnesses and only 11 witnesses remain to be examined.

6. Perused the charge-sheet, the FIR and the 164 statement of the victim as well as the medical history given to the doctor and the medical records. The victim has given a consistent and detailed account of the incidents in his statement under Section 164 Cr.PC clearly identifying the Applicant and narrating the act of penetrative sexual assault. The version is further corroborated by the medical record. The contention of the Applicant regarding absence of injuries is unpersuasive. It is settled position of law that, the absence of physical injuries does not, *ipso facto*, dislodge the prosecution case particularly, in cases involving child victims.

7. Children may not resist sexual assault with the same degree of force as adults, and the nature of assault may not always result in visible or lasting injuries. The Supreme Court in *State of H.P. v. Gian Chand*¹ held that non rupture of

1(2001) 6 SCC 71

hymen and absence of injuries do not necessarily disprove the commission of rape, especially when the victim is a child. The offence as alleged is severe in nature and the minor boy is still grappling with the trauma faced by him for the two months of his association with the Applicant. There is no reason for the boy's father nor the victim himself to implicate the Applicant in a false case.

8. Considering the nature of the allegations, *prima facie* I am of the view that this is not a fit case for granting bail to the Applicant.

9. Hence, the present Application is rejected and disposed off as such.

10. Needless to state that the trial Court concerned shall decide the case on its own merits, uninfluenced by the observations made in this order.

(DR. NEELA GOKHALE, J)