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

BAIL APPLICATION NO.4050 OF 2024

Kaustubh Ramesh Dalvi	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

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Mr. Sachin P. Kanojia for the applicant.

Mrs. Megha S. Bajoria, APP for respondent No.1-State.

Ms. Kanchan Pawar for respondent No.2-victim
(appointed as Legal Aid).

CORAM : AMIT BORKAR, J.

DATED : JULY 30, 2025

P.C.:

1. The accused has filed this regular bail application under Section 439 of the Criminal Procedure Code, 1973 in connection with Special Case No.319 of 2024. The case originates from Crime Register No.309 of 2024 registered at Kurar Police Station, Mumbai. The charges against the accused are under Sections 377 and 354(A) of the Indian Penal Code, 1860 and Sections 4, 8, and 12 of the Protection of Children against Sexual Offences Act, 2012.

2. The prosecution case is based on the complaint filed by the victim's mother. According to her statement, on 8th April 2024 at around 7:00 AM, her husband left for work in Raigad. Her 9-year-old son also woke up and left home saying he was going to meet his friend Alok. Later, when her husband realized he had forgotten

his bluetooth device at home, he asked her to bring it to Appapada. While walking towards Appapada, the complainant saw the accused sitting with his pants open and his private parts exposed. She heard some noise from behind a parked vehicle nearby. When she went to check, she found her son sitting there, scared and crying. When she questioned the accused about his improper conduct with her son, he tried to hide his private parts and then ran away. The complainant brought her frightened son home.

3. When the mother questioned her son at home, he revealed that their neighbor (the accused) had called him to play and brought him near the wall next to a parked vehicle. There, the accused opened his pants, exposed his private parts, and forced them into the victim's mouth. The complainant immediately called her husband and informed him about the incident. Her husband, who had already left for work, told her they would go to the police station after he returned. Later, when the mother asked her son if any similar incident had happened before, the child disclosed that about two months earlier, the accused had taken him inside an auto-rickshaw parked near their house. In that incident too, the accused had forced his private parts into the victim's mouth and threatened to beat the child if he told anyone about it.

4. The learned counsel for the accused argued that his client has been falsely implicated in this case. He pointed out certain discrepancies in the prosecution case. The FIR was registered on 9th April 2024 at 2:56 AM, but the mother's statement was recorded on 8th April 2024. He also highlighted that independent

witnesses stated they saw the accused's mother quarreling with the victim's mother near their residence, while the victim's mother claimed the accused fled from the scene. The counsel further argued that if the incident occurred on 7th April 2024, the FIR should have been filed earlier. Since the accused was arrested on 9th April 2024, he deserves to be granted regular bail.

5. The learned Additional Public Prosecutor and the counsel representing the victim strongly opposed the bail application. They emphasized that the victim is only nine years old and his mother witnessed the sexual assault. The mother waited for her husband to return home at night around 10:00 PM before filing the complaint. The 9-year-old victim has consistently described the incident in his statements under Sections 161 and 164 of the Criminal Procedure Code. The prosecution further argued that witnesses observed a quarrel between the accused and the victim's mother in the morning, during which the incident was discussed. The allegations of oral sexual assault are supported by medical evidence, which shows swelling on the victim's lower lip when examined at 1:30 AM on 9th April 2024. The accused has not provided any specific details about any enmity with the victim's family. Since the victim is only nine years old, the provisions of Section 6 of the POCSO Act are applicable, which prescribes punishment of not less than 20 years imprisonment. Therefore, the bail application should be rejected.

6. The prosecution case primarily rests on the testimony of the victim's mother, who claims to be an eyewitness to the alleged incident. According to her account, on 8th April 2024 at

approximately 7:00 AM, she discovered the accused in a compromising position with her nine-year-old son near a parked vehicle. The mother's narrative describes finding the accused with his pants open and private parts exposed, while her son was sitting nearby in a frightened and distressed state. The immediate reaction of the accused, as described by the mother, was to attempt concealment of his private parts before fleeing the scene, which could be construed as consciousness of guilt.

7. The victim's disclosure to his mother reveals disturbing details of the alleged assault. The child reportedly narrated how the accused, who was their neighbor, had lured him under the pretext of playing and subsequently committed the alleged sexual assault by forcing oral contact. This account gains additional gravity when considered alongside the child's revelation of a prior similar incident that occurred approximately two months earlier in an auto-rickshaw, where the accused allegedly threatened the child to maintain silence.

8. The prosecution has placed reliance on medical evidence which reportedly shows swelling on the victim's lower lip when examined at 1:30 AM on 9th April 2024. This medical evidence, if genuine and properly established, could serve as important corroborative evidence supporting the allegations of oral sexual assault. Medical evidence in cases involving sexual offences against children holds significant probative value, as it provides objective verification of the alleged acts.

9. The victim has provided statements under Sections 161 and 164 of the Criminal Procedure Code, consistently describing the incident. Section 164 statements, being recorded before a Magistrate, carry greater evidentiary value as they are made under oath and in the presence of a judicial officer. The consistency in the child's narration across different stages of investigation strengthens the prosecution case.

10. The Applicant's counsel has raised several procedural irregularities that merit consideration. The timing discrepancy between the recording of the mother's statement on 8th April 2024 and the registration of the FIR on 9th April 2024 at 2:56 AM suggests possible deliberation or delay in filing the complaint. While such delays can sometimes be explained by practical considerations, especially in cases involving sexual offences where victims and their families may need time to process the incident, they nonetheless require judicial scrutiny.

11. The Applicant has also pointed to contradictions between witness statements and the complainant's version. Independent witnesses allegedly observed a quarrel between the accused's mother and the victim's mother near their residence, while the complainant claims the accused fled from the scene. Such contradictions, if substantiated, could raise questions about the reliability of the prosecution's version of events.

12. The applicant's contention that the accused has been falsely implicated requires careful examination. False allegations in sexual offence cases, while not common, are not entirely unknown.

However, the defense has failed to provide specific details about any enmity between the families that could serve as a motive for false implication. The burden lies on the defense to establish credible grounds for such allegations.

13. The case falls squarely within the ambit of the Protection of Children from Sexual Offences Act, 2012. Section 6 of the POCSO Act, which deals with aggravated penetrative sexual assault, prescribes a minimum punishment of twenty years imprisonment, extendable to life imprisonment. The severity of the prescribed punishment reflects the legislative intent to deal strictly with sexual offences against children.

14. The vulnerability of child victims, the potential for intimidation, and the serious nature of the offences require courts to adopt a restrictive approach while considering bail applications. The interests of the child victim and the need to ensure their safety and security must be paramount considerations.

15. Courts generally consider factors such as the nature and gravity of the charges, the character and antecedents of the accused, the possibility of the accused fleeing from justice, the likelihood of the accused tampering with evidence or influencing witnesses, and the period of detention undergone by the accused. In the present case, the accused was arrested on 9th April 2024, and the period of custody must be factored into the bail consideration.

16. The serious nature of the charges under the POCSO Act, the age and vulnerability of the victim, the potential for intimidation

of witnesses (particularly the child victim and his family who are neighbors), and the strong prima facie case based on eyewitness testimony and medical evidence weigh heavily against the grant of bail.

17. The material on record suggests a strong prima facie case against the accused. The eyewitness account of the victim's mother, corroborated by the child's consistent statements and supported by medical evidence, creates a compelling narrative of guilt. While the defense has raised procedural questions and alleged contradictions, these do not appear sufficient to overcome the strength of the prosecution case at this preliminary stage. The fact that the victim and the accused are neighbors adds credibility to the prosecution case, as it explains the accused's access to the child and opportunity to commit the alleged offences. The child's disclosure of a prior similar incident further strengthens the case by establishing a pattern of behavior.

18. Cases involving sexual offences against children evoke strong public sentiment and concern. The protection of children from sexual exploitation is not merely a legal obligation but a moral imperative for society. Courts must balance individual liberty rights with collective social interests and the paramount need to protect children from potential harm.

19. The grant of bail in such cases must be weighed against the message it sends to society about the seriousness with which the judicial system treats crimes against children. However, the constitutional principle of presumption of innocence and the right

to personal liberty cannot be entirely overlooked, even in serious cases.

20. The proximity of the accused and the victim's family as neighbors creates legitimate concerns about potential intimidation or influence over witnesses. The child victim, being of tender age, is particularly vulnerable to such influence. The possibility of the accused attempting to pressure the victim or his family to withdraw the case or change their testimony cannot be ignored.

21. After careful consideration of all aspects of the case, including the nature and gravity of the charges, the strength of the prosecution case, the vulnerability of the child victim, the potential risks associated with granting bail, and the period of custody undergone by the accused, this Court finds that the circumstances do not warrant the grant of regular bail at this stage.

22. The evidence on record prima facie establishes a strong case against the accused. The victim's tender age, the proximity of the parties as neighbors, and the serious nature of the charges under the POCSO Act create legitimate concerns about witness safety and the proper conduct of the trial. While the accused has certain constitutional rights, including the right to liberty, these must be balanced against the compelling interests of child protection and the administration of justice.

23. The applicant's arguments regarding procedural irregularities and alleged contradictions, while noted, are not sufficient to overcome the strong prima facie case established by the prosecution. These issues can be appropriately addressed

during the trial proceedings where they will receive full consideration.

24. Therefore, considering all relevant factors and in the interest of justice, the bail application is hereby rejected.

(AMIT BORKAR, J.)