

Shabnoor

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

BAIL APPLICATION NO.4075 OF 2024

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Feroz Answar Ali Shaikh

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Vivek Arote a/w Akshay Dingale a/w Ms. Amruta Mhapralkar for the Applicant.

Mr. Prasanna P. Malshe, APP for State – respondent No.1.

Mr. Sumedh S. Modak for respondent No.2 (Appointed as Legal Aid Counsel).

Mr. Sachin Tambe, PSI, MIDC Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 6, 2025

P.C.:

1. The present application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking bail in Special Case No.438 of 2021. The applicant stands charged for offences under Section 354 of the Indian Penal Code, 1860 and Sections 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. As per the prosecution case, the mother of a 7-year-old girl child lodged a complaint on 13 September 2021. She stated that when her minor daughter was questioned by her parents about the

incident, the victim disclosed that for several days, whenever no one was present in the house, the applicant would make her hold his private part with her hand and would move it while also touching her private parts, causing her pain. The victim had not earlier disclosed this misconduct to anyone as she was afraid that people would scold or blame her for the same.

3. It is further alleged that the accused had held the victim's hand and instructed her to hold his private part while he moved it. When the victim's mother immediately confronted the applicant and questioned him about his actions, the applicant sought forgiveness. Thereafter, the complainant contacted the applicant's wife and informed her about her husband's conduct. As per the complainant, both husband and wife tendered apology and requested her not to lodge a police complaint, assuring that they would vacate the locality.

4. The learned counsel for the applicant has submitted that the applicant was taken into custody on 14 September 2021. Though charges have been framed against him, the trial proceedings have not yet begun. The prosecution has listed a total of 12 witnesses for examination. The alleged offences are punishable with imprisonment up to 7 years. Hence, the applicant is entitled to be enlarged on bail and prays for grant of bail.

5. Per contra, the learned Additional Public Prosecutor along with the learned counsel appearing for the victim have opposed the bail application. They have contended that the victim was only 7 years of age when the incident occurred, the offence alleged

against the applicant is of grave nature, and the applicant lives in the vicinity of the victim. They have further argued that upon release on bail, there is likelihood of the applicant tampering with the witnesses. It has been submitted that the material on record prima facie establishes the ingredients of the offences charged against the applicant. Therefore, the bail application ought to be dismissed.

6. I have carefully considered the submissions made by both sides and have perused the material on record. The question before this Court is whether the applicant is entitled to be released on bail pending trial.

7. It is well settled that bail is the rule and jail is the exception. The fundamental principle underlying the grant of bail is that an accused person should not be punished before conviction. While considering an application for bail, the Court has to strike a balance between the right to personal liberty of the accused and the interest of the society at large.

8. In the present case, the applicant has been in custody since 14 September 2021, which is a period of approximately three years and eleven months. Though charges have been framed, the trial has not yet commenced despite the lapse of considerable time. The prosecution has cited 12 witnesses, and considering the normal course of judicial proceedings, the trial is likely to take substantial time for completion.

9. The offences alleged against the applicant carry a maximum punishment of 7 years imprisonment. The applicant has already

undergone custody for a significant period. The right to speedy trial is a fundamental right guaranteed under Article 21 of the Constitution of India, and prolonged incarceration without trial would amount to violation of this constitutional guarantee.

10. While this Court is mindful of the serious nature of the allegations and the tender age of the victim, it is noteworthy that the prosecution case is primarily based on the testimony of the victim child and her mother. The investigation appears to be complete, and there is no material on record to suggest that the applicant would tamper with evidence if released on bail.

11. As regards the apprehension of witness tampering, the same can be adequately addressed by imposing appropriate conditions. The fear that the applicant may influence witnesses cannot be the sole ground to deny bail, particularly when the applicant has been in custody for such a prolonged period without the trial commencing.

12. Taking into consideration the period of custody already undergone, the delay in commencement of trial, the maximum punishment prescribed for the offences, and the fact that appropriate conditions can be imposed to address the concerns raised by the prosecution, this Court is of the considered view that the applicant deserves to be enlarged on bail.

13. However, considering the serious nature of the allegations and the need to ensure that the victim and witnesses are not influenced, it would be appropriate to impose stringent conditions while granting bail to safeguard the interests of justice and ensure

the applicant's presence during trial.

14. Hence, the following order :

(i) The Bail Application stands allowed.

(ii) The applicant shall be released on bail in connection with Special Case No.438 of 2021 for offences punishable under Section 354 of IPC, Sections 8, 10 and 12 of the POCSO Act, on executing a Personal Bond in the sum of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.

(a) The applicant shall not directly or indirectly make any contact with the family members of the victim or any prosecution witnesses, and shall not tamper with the evidence in any manner.

(b) The applicant shall report to the concerned police station once in every month (i.e., on 1st day of every month) between 10:00 a.m. to 12:00 noon, until further orders.

(c) The applicant shall not enter the jurisdiction of MIDC Police Station, except solely for the purpose of marking his attendance.

(d) The applicant shall furnish his current residential address and mobile number to the Investigating Officer, and shall inform the Investigating Officer of any change in address or contact details forthwith.

(e) In case of any breach of the conditions mentioned

above, the prosecution shall be at liberty to move for cancellation of bail.

15. The Bail Application stands disposed of accordingly.

(AMIT BORKAR, J.)