

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4144 of 2024

Jayesh Prakash Devrukhkar

.. Applicant

Versus

State Of Maharashtra and Ors.

.. Respondents

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- Mr. Tanveer Nizam a/w Mariam Nizam, Advocates for Applicant.
- Ms. Kamini Yadav, Advocate for Respondent No.2.
- Mr. Balraj B. Kulkarni, APP for State.
- Mr. Patekar, PI and Mr. Kishor Desai, PSI, Dindoshi Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 21, 2025

P. C.:

1. Heard Mr. Nizam, learned Advocate appearing for Applicant, Ms. Yadav, appearing for Respondent and Mr. Kulkarni, learned APP for State.

2. This is a bail application filed by the Accused who is chargesheeted by the Dindoshi Police Station in special case No.379 of 2024 for offences punishable under Section 376 - AB of Indian Penal Code, 1860 (for short 'IPC') and under Section 4,6 and 8 of The Protection of Children from Sexual Offences Act,2012 (for short 'POCSO'). He is arrested on 25.04.2024.

3. It is prosecution case that Applicant has abused a 3 and half year old girl, who is his niece. The victim is related to the

Applicant. According to prosecution as both parents of victim were working they used to leave her in the care of her maternal grandmother when they used to go to work. When the maternal grandmother underwent an operation of her waist, the victim's parents decided to stay separately on their own to care for their respective mothers since they both required care and support.

4. The victim's father and victim stayed with the father's family comprising of grandmother, grandfather, uncle (father's younger brother- Applicant before me) and his wife in a joint family. The victim's father used to stay over the weekends and during the week used to stay with his wife i.e. mother of victim - First Informant.

5. According to prosecution case on 21.03.2024, the grandmother informed victim's father that victim used to cry while urinating and also used to say that she had a stomach ache. The grandmother informed her father that she had taken the victim to a doctor called Ms. Anjana Gala and the said doctor had examined the victim and opined that she was suffering from a fungal infection. The said doctor in her diagnosis noted that there was redness and itching near the private part of the victim alongwith pigmentation patches and the doctor recommended not to use the diaper and prescribed two fungal prevention ointments, one lotion for application and one oral pediatric solution for 20 days. The said recommendation of the doctor

is appended at page No. 18 of the Application. It is by a doctor called Dr. Anjana Gala who is a dermatologist and skin specialist.

6. The grandmother informed that the ointment and lotion were regularly applied on the infected part. However on 23.04.2024 the grandmother informed victim's father that the area near the victim's private part was not healing inspite of application of ointment and lotion. Therefore the victim father's called up his wife i.e. victim's mother who asked them to come over to wife's mother's home. Prosecution case is that thereafter parents of victim inquired with their daughter as to what happened to her and the victim told them that Applicant before me (called as 'Jay kaka') who is brother of victim girl's father had touched her there. The victim's parents thereafter took her to Shatabdi Hospital at Kandivali. There they were told by the doctors to first lodge a report in the police station which was lodged by the parents and thereafter the victim was given treatment in the said Hospital. The entire investigation is complete. Statements have been recorded of victim's parents, grand parents, Applicant and all others, chargesheet is filed.

7. Mr. Nizam, learned Advocate appearing for the Applicant would submit that, the grandparent's house is so small such that it is virtually impossible for the Applicant to have behaved in this manner as alleged by the prosecution as there is complete absence of privacy

in the presence of parents and the Applicant's wife who used to provide care and support to the victim. He would submit that the Applicant was employed and used to be out through out the day to support his family and during the time that is spent in the house there would not be a singular instance of he being alone with the victim. That apart he would submit that the Applicant and his wife alongwith his parents would dote on the victim and on weekends the victim's father also used to stay with them.

8. In the above backdrop he would invite my attention to medical evidence in the present case. He would submit that medical evidence appended at page No. 18 given by the doctor if seen it is evident that the victim had red rash on the skin near her private part and the doctor herself recommended not to use the diaper as stated in the medical certificate and prescribed application of two ointments and lotion three times a day as state therein. He would submit that after the said treatment started and there was no improvement as the victim did not feel better, a report has been lodged within two days. He would submit that had there been any indication of an overact it would have been so stated in the medical certificate issued by the doctor in the first instance. He would submit that the doctor has specifically prescribed two ointments and lotion to be applied due to fungal infection with which the victim was suffering and it is

specifically stated in the certificate that there was redness of vulva and pigmentation patches on body and private parts.

9. In the above matter, it is seen that the prosecution has referred to and relied upon a medical report which the prosecution has obtained pursuant to the filing of FIR. That report is appended at Page No. 41 of the Application. I have perused the said report. It is obtained from Medical Department of Brihanmumbai Municipal Corporation Hospital. It is seen that victim was staying with her grandmother since February, 2024 along with entire family comprising of 5 members, save and except her father who would be away on weekends as delineated hereinabove. Said medical report further clearly highlights the FIR incident but does not identify at all as to when the alleged incident could have happened and most importantly it states that there are no signs of any external or internal injuries or any mark on the victim's body part. This precise finding in column No. 18, *inter alia*, pertaining to the medical examination of the genital parts / other orifices in regard to external genitalia as also internal genitalia is precise. The said finding clearly states that there is no tear or discharge or oedema or any tenderness with respect to any external or internal injury mark over the body parts. Similarly the vaginal cavity column also states the same remark. Most importantly the clinching *prima facie* evidence placed on record is with respect to column No. 18 subsection 4

pertaining to genital and anal evidences which clearly records that there is no fingering involved and therefore clinical finding opines that there is absolutely no external injury mark whatsoever.

10. The only piece of evidence which the learned Prosecutor Mr. Kulkarni has vehemently persuaded me to consider in this medical report is the final opinion which states that probability of the sexual intercourse cannot be ruled out. I am not inclined to accept the submission made by the learned APP for the reason that if the aforesaid submission is accepted it would be in fact contrary to the complaint filed by the Complainant and the case of the prosecution itself. Admitting and agreeing with the prosecution case at the highest, whilst not opining on the same, the only case with which the prosecution has come to the Court is the fact that there was an alleged touch by the Applicant. It need not be forgotten that the factor which has been discussed hereinabove goes to the root of the matter. That apart considering the age of the victim there would be absolutely no reason to accept the submission made by the learned prosecutor about the possibility of sexual intercourse which cannot be ruled out in the present case as stated. I say it is primarily on the basis of the evidence which has been placed before the Court *prima facie* in the form of the dermatologist certificate which is prior to the date of the hospitalization of the victim.

11. The record clearly shows that within two days the victim's rashes and redness did not heal completely considering her age and she finding it difficult and was crying, hence her parents took her to the hospital. In the hospital they met with a situation that they were told to first lodge a complaint and only thereafter they agreed to treat the victim. The affidavit filed by the victim's father in this regard is placed on record. The learned advocate appearing for the victim's father and the complainant would persuade me to consider the said affidavit. That apart on page No. 49 which is the continuation sheet of the medical examination report of the victim the doctor on duty clearly states that there are a few crusted lesions on the periphery of the private part of the victim and the opinion is that they could be because of dried secretions or improper hygiene. This specific report of the BMC Hospital aligns with the medical report given by Dr. Gala, dermatologist who in the first instance and in medical parlance during the golden hour treated the victim after a thorough examination. This opinion of the Brihanmumbai Municipal Corporation Hospital at Page No.49 clearly aligns with the opinion of Dr. Gala, dermatologist operating Skin & Child Care Clinic which is appended as Exhibit 'A' at Page No.18 of the Application. It also needs to be reiterated that when the victim was taken to the dermatologist prescription was given by the doctor that victim was required to apply two specific fungal

eradication and the third lotion for application on the private parts, pigmented spot and entire body of the victim. She was advised by the dermatologist to take medication mentioned against item No.1 for 20 days and prescribed 5 ml dosage to be taken once at noon time. What is seen is that within two days after said treatment had commenced, considering the victim's age she felt uneasy which led her parents to take to hospital. *Prima facie* from the above it is opined that medical certificate given by Brihanmumbai Municipal Corporation Hospital pursuant to the lodging of the FIR clearly supports the case of the applicant before me who has placed the certificate of the treating doctor. It also needs to be reiterated that it was not applicant who took the victim to the Hospital, but the grandmother herself.

12. In view of the above observations and findings, I find it fit case to consider and release the applicant on bail. Needles to state that since the charge sheet has already been filed Applicant shall cooperate with the investigation and shall attend the dates of Trial without seeking any adjourments.

13. Hence, the following order:-

- (i)** Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

- (ii)** Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for three months and thereafter as and when called;
- (iii)** 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 revocation of this order;
- (iv)** Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v)** Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi)** Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii)** Any infraction of the above conditions shall entail revocation of this order.

14. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

15. In view of the above directions, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]