

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4321 OF 2024

Salauddin Daud Shaikh

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

.....

- Ms. Harshada Morey, Advocate for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent No.1 – State.
- Ms. Priyanka B. Chavan, Appointed Advocate through Legal Aid for Respondent No.2.
- Mr. S.S. Ghag, PSI – Pairavi Adhikari Mahalakshmi Police Station present.

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 20, 2025.

P.C.:

1. Heard Ms. Morey, learned Advocate for Applicant; Mr. Kulkarni, learned APP for Respondent No.1 – State and Ms. Chavan, learned Appointed Advocate through Legal Aid for Respondent No.2.

2. Present Bail Application was received through jail from the Applicant. After the said Application was received, learned Advocate Ms. Morey was appointed by Applicant to represent and espouse the cause of Applicant for seeking bail. She has placed the charge-sheet on record. Applicant is indicted in an offence punishable under the provisions of Indian Penal Code, 1860 (for short ‘**IPC**’) and Protection of Children from Sexual Offences Act, 2012 (for short ‘**POCSO Act**’). At

the time of offence Applicant was 31 years old whereas prosecutrix was 15 years and 5 months old.

3. By order dated 07.03.2025, this Court appointed Ms. Chavan to represent and espouse the cause of Respondent No.2 – prosecutrix. Ms. Chavan has taken instructions from the prosecutrix and has filed her written submissions and also made oral submissions across the bar.

4. With the able assistance of Ms. Morey, learned Advocate for Applicant; Mr. Kulkarni, learned APP for Respondent No.1 – State and Ms. Chavan, learned Advocate for Respondent No.2, I have perused the record of the case.

5. *Prima facie* it is seen that on the morning of 12.01.2021 at about 06:00 a.m. prosecutrix met the Applicant and went with him without informing her parents. According to the prosecution case, Applicant was neighbour of prosecutrix's family and was known to her way prior to the date of the incident. Prosecutrix in her statement has stated that without knowledge of her family on two occasions she accepted gift of a mobile phone from Applicant to talk to him and remain in touch with him. She has also stated that she received messages expressing love from the Applicant to her regularly on the mobile phones to which she responded affirmatively. Three months after the first mobile phone was gifted to her, she was reprimanded by her family members after having been caught talking to the Applicant

on the mobile phone by her brother and equally her brother also reprimanded the Applicant by speaking to him. Despite that prosecutrix accepted the second mobile phone as gift thereafter for being in touch with the Applicant and it continued till 12.01.2021.

6. On 11.01.2021, family members of prosecutrix once again apprehended her while talking to the Applicant near their residence and brought her home and severely reprimanded her. Prosecutrix states that on the following day, Applicant called her early in the morning and asked her to meet him. In her statement, prosecutrix has stated that she went alongwith the Applicant on the morning of 12.01.2021 to Malad Railway Station initially and spent her entire day with him and thereafter on the following day they both left for Delhi where they stayed in the Applicant's sister house alongwith her family.

7. However when the statement of the prosecutrix alleging the incidents between 14.01.2021 and 16.01.2024 appended at page No.14 of the Application is seen, there is a substantial inconsistency from the FIR which is recorded as also her further statement which is given during her Medico Legal Examination. According to prosecutrix on the morning on 12.01.2021 her family members spotted them behind their house due to which she had no option than to go with the Applicant.

8. In the statement of her father, he has however stated that in the morning on 12.01.2021 at about 06:00 a.m. the wife of Applicant visited their house and informed them that the prosecutrix and the Applicant had gone away together. Despite this the FIR which was lodged later in the day on 12.01.2021 is only with respect to a missing complaint of the prosecutrix.

9. In the statement recorded by the prosecutrix she has also stated that on 12.01.2021 in the evening when the Applicant switched on his mobile phone, he received a phone call from her father and he spoke to him and told him to bring the prosecutrix back on the following day. She has stated that at that time she also spoke to her father and informed him about she being alongwith the Applicant at that time.

10. Apart from the aforesaid, further dichotomy which is noticed in the statements of the prosecutrix recorded during her Medico Legal Examination which show further inconsistency in respect of she having left the house without informing anybody alongwith the Applicant. During her Medico Legal Examination, prosecutrix has stated that even when she was in Delhi she spoke to her brother prior on 15.01.2021 and asked him to send tickets for them to travel back to Mumbai. Two incidents having occurred in the house of the sister of Applicant on 14.01.2021 and 15.01.2021 are alleged. No specific details are given.

11. When the aforesaid statements of the prosecutrix are seen they *prima facie* show that there is no element of force or violence which has been stated and narrated by her. The age of the prosecutrix is below 18 years. The presumption under Section 29 of the POCSO Act would apply, but the said presumption is not absolute. The said presumption has to be in consonance and in consistency with the case of the prosecution. The various statements of the prosecutrix which are referred to herein above are *prima facie* inconsistent and there are material contradictions specifically with respect to the alleged two incidents which have been alleged by the prosecution.

12. The Medico Legal Report of the prosecutrix is inconclusive as it categorically states that because of the timeline of more than 77 hours after the alleged incident in question, there are no observations whatsoever noticed in the said Medico Legal Report.

13. In view of the aforementioned *prima facie* observations and considering the long incarceration of the Applicant of more than 4 years and 1 months pending trial, Applicant has made out a case for grant on bail.

14. 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) 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;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) 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;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not make any attempt to re-associate with the victim girl in any manner either through any

device or in-person

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) 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.

15. 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.

16. Fees of the learned Advocate Ms. Chavan, 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.

17. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay