

Amberkar

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

CRIMINAL BAIL APPLICATION NO. 4885 OF 2024

Dinesh @ Temba Kiran Sherpa

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Ms. Payoshi Roy a/w Ms. Madhvi Gomathieswaran, Advocates for Applicant.
- Mr. R.M. Pethe, APP or Respondent No.1 – State.
- Ms. Devyani Hemant Kulkarni, Advocate for Respondent No.2 – Victim.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2025

P. C.:

1. This Bail Application is filed under Section 439 of CrPC¹ in connection with Special Case No. 783 of 2023 (C.R. No.830 of 2021 lodged at Shanti Nagar Police Station) before Special Court under POCSO Act², Additional Districts and Sessions Court, Bhiwandi.

2. Prosecution case against Applicant is that he sexually assaulted the victim while both of them were placed in the Observation Home, Bhiwandi. Applicant was 18 years of age at the time of the incident and was placed in the observation home being indicted in C.R. No.168/2018 under Section 302, 201 and 120B Of IPC³. Victim boy

¹ Code of Criminal Procedure, 1973.

² Protection of Children from Sexual Offences Act, 2012.

³ The Indian Penal Code, 1860.

was 16 years of age at that time. Date of incident is 30.11.2021. Complainant is the Probation Officer of the Observation Home.

3. Ms. Roy, learned Advocate appearing on behalf of the Applicant would submit that Applicant is falsely implicated at the behest of the Complainant owing to their verbal altercation and enmity. She would submit that there is no *prima facie* material or eye witnesses to the incident and would further submit that even the CCTV footage exonerates the Applicant and its findings is in contrast to the version of prosecution case which claims that the CCTV Camera was covered with a mattress. She would persuade the Court to consider that although Applicant is indicted in another crime, the same is completely unrelated to the present crime and circumstances of the case should be considered holistically and benefit of doubt should be extended to the Applicant especially in view of the fact that he is in detention since 2018 and any further incarceration of his in an adult prison would hamper his prospects of reformation that he had depicted positively while in the Observation Home at Dongri post the alleged incident. She would rely on the observation reports appended at page 96 and 100 of the said detention home to support her contention and persuade the Court to consider the case of the Applicant considering his past and future that will hold for him as it

would in all likelihood affect him if he is kept with hardened criminals in jail.

4. Mr. Pethe, learned APP appearing on behalf of Respondent No.1 – State would ardently counter the submissions of Ms. Roy. He would at the outset point out the provisions of Section 29 of the POCSO Act and would submit that in the light of the same, the law presumes that the Accused has committed the said offence. He would submit that the Applicant has not rebutted any of the claims of the victim so as to render the presumption *non est*. He would submit that the offence alleged against the Applicant is serious in nature. He would submit that the Applicant is indicted in another offence under Section 302, 201 and 120B of IPC. He would conclude his submissions by stating that the Applicant's record would suggest that he would be a threat to the Society and letting him at liberty would put the Society at large at a risk.

5. Ms. Kulkarni, learned appointed Advocate appearing on behalf of the Respondent No.2 – Victim would submit that the act of Applicant has caused immense embarrassment coupled with physical and mental agony to the victim boy. She would submit that the Applicant has utilized his position and influence in the Observation Home as a senior to lure the victim by falsely offering him certain addictive substances and under this garb of offer, sexually exploited

him. She would submit that such act based on coercion and threat coupled with his prior record portray his delinquency which should be viewed seriously by the Court. She would thus pray for rejection of the Application.

6. I have heard the learned Advocates at the bar and with their able assistance, perused the record of the case.

7. At the outset, the parties appear to be at variance with regards to a few material aspects of the case which are *inter alia* the findings of CCTV recordings. Be that as it may, this court exercising it's jurisdiction under Section 439 of CrPC need not delve into these aspects. What is material for this Court to adjudicate the present Application is "Whether the Applicant is entitled for bail on *prima facie* case and he would submit himself for trial?"

8. One of the ways to arrive at a *prima facie* finding on the aforementioned question is by considering the past conduct of the Accused. In the case Accused before me, he is indicted in one serious offences. This conduct, in usual circumstances would not inspire confidence of the Court. However, it is important that past records should not to be looked at in a vacuum but in the light of the circumstances. Record shows that Applicant – Accused in the present case is an orphan raised in a red light area. After the demise of his

mother when he was barely 3 years old, he was raised by a friend of his mother who used to be involved in managing sex trade. He is unaware of the whereabouts of his father. His adverse childhood may have brought him into situations of conflict which can be fairly imagined and may have resulted him being implicated in such situations in the past. His ultimate fate in the case would be undoubtedly determined by the respective Trial Courts, but at this stage I am inclined to consider his case.

9. My inclination to consider the Applicant's case and grant bail is because he has *prima facie* depicted trends of reformation. The records of the Observation Home dated 04.06.2024 appended at page Nos. 96 and 100 of the Application when perused indicates that when a safe space was provided to the Applicant, he has shown distinct signs of improvement and reformation. He has indicated his interest to study till 12th Standard and had also filed a Bail Application with the intention to appear for SSC examination which came to be rejected *vide* order dated: 27.09.2024. I believe that even if he is convicted at a later stage, his future re-integration into the society would be better served if he is allowed to continue to work on himself and reform his conduct. A convict criminal may not remain into prison for perpetuity but if subjected to criminality of prisons at this early age, it may possibly result in him to be a perpetual threat to the society. I am of

the opinion that if there exists even a semblance of a chance that a young under trial offender – prisoner may reform his conduct, Courts should not hold back from ensuring that such a chance is given to the Accused person, after all no good would be done to either the society or the Accused by keeping him in prison. Needless to state that his conduct and presence before the Trial Court can be ensured by imposing appropriate conditions.

10. When this Court expressed concerns regarding Applicant's future prospects upon his release on bail, given his status as an orphan and the potential risk of resorting to criminality due to lack of support, Ms. Roy would submit across the bar that a responsible acquaintance has undertaken to provide care and support to the Applicant. She has placed before the Court an Affidavit of Mr. Anil Kanyalal Biswas dated: 12.03.2025 to that effect. She would submit that the deponent of the Affidavit knew the Applicant's mother for a long time prior to her death. She would submit that in the present circumstances, he has offered to take care of Applicant. He has stated in the Affidavit that Applicant has been offered employment by Mahila Vikas Shishu Sanskar Kendra as an outreach worker for a salary of Rs.12,000/- per month. If required, the said Mr. Anil Biswas shall stand as surety for the Applicant for his release from prison.

11. I have perused the Affidavit. *Prima facie* the deponent is not a blood relative or relative of the Applicant. In that regard, he will have to take appropriate steps as available to him in law since the Applicant before me is a major.

12. In view of the above, present Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.10,000/- (Rs. Ten Thousand Only) with one or more sureties of the like amount;
- (ii) Applicant shall furnish an Affidavit to the Investigating Officer undertaking to appear for his SSC exams, the Affidavit shall be furnished within two weeks from his release;
- (iii) 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 or as and when called;
- (iv) 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 she does so, it will entitle the prosecution to apply for cancellation of this order;

- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not contact the victim or influence any of the witnesses or tamper with the evidence in any manner;
- (vii) 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;
- (viii) Any infraction of the above conditions and undertaking in the Affidavit shall entitle the prosecution to apply for cancellation of this order.

13. 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. The Trial Court in *seisin* shall decide their respective cases in accordance to procedure established by law.

14. This Court Appreciates the assistance rendered by Ms. Kulkarni, appointed Advocate through the High Court Legal Services Committee to espouse the cause of the victim, her fees to be released as per rules.

This Court also appreciates the assistance rendered by Mr. Pethe,
learned APP

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

Amberkar

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
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AMBERKAR
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