

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 5134 OF 2024

Vicky Sunil Patil

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Mr. Sandeep B. Satkar for Applicant
- Mr. S.A. Karmakar, APP for State
- Ms. Aneesa Cheema, Advocate for Respondent No. 2 appointed by High Court Legal Services Committee, Mumbai
- Mr. Nitin Kamble, PSI, Amboli Police Station is present

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2025

P. C.:

1. Heard Mr. Satkar, learned Advocate for Applicant; Mr. Karmakar, learned APP for State and Ms. Cheema, learned Advocate for Respondent No. 2.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure (for short, "**Cr.PC.**") in connection with Crime No. 1116/2023 registered with Amboli Police Station, Mumbai under Sections 377, 323 and 506 of the Indian Penal Code, 1860 (for short, "**IPC**") and Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "**POCSO Act**").

3. First informant is the mother of the victim boy who was 13 years old at the time of incident. First informant was married to the Applicant. It was her second marriage pursuant to her divorce with her first husband. Victim is the son of the first informant from her first marriage and he was staying with her. First informant also has a two year old daughter from the Applicant. They were all living together. The incident happened 20 days prior to its disclosure in the circumstances stated in the FIR.

4. On 13.11.2023 the victim after returning from school was handling the mobile phone of his mother when he saw the call received from his father i.e. Applicant on the phone and he asked his mother as to whether his father was returning home. When the mother nodded in the affirmative, victim suddenly shivered and immediately passed urine there and there itself in his clothes. When the mother witnessed this incident, she slapped and scolded him for doing the same despite he being 13 years old. Victim started sobbing and when the mother consoled and asked him the reason which any mother would otherwise do in such case, victim informed her that he was petrified on learning that his father was coming home. He recalled and informed that a few days back on 26.11.2023 when the victim was taking his bath inside the bathroom in the afternoon at about 3:00 p.m., the bathroom was not bolted from inside and

Applicant entered the bathroom and forcefully applied soap on his body and told him that he would bathe him and while doing so he molested and committed the act which is described in the FIR of sodomizing the victim by penetration. Victim boy informed his mother that the act was painful and he started crying loudly which alerted the neighbours in the vicinity also. However he was abused, beaten and threatened by the applicant not to disclose the said incident to any person and the Applicant told the neighbours that he had scolded the boy and left the house thereafter. Applicant worked in the film industry and used to be intermittently remain out of his house for work, sometimes for days also. The first informant worked as a cook in a nearby restaurant. Immediately on the learning of the incident, the first informant called her immediate relatives i.e. her two sisters (मावशी) and two brother-in-laws and informed them about the happening of the incident and narration of the same by her son to her. Without wasting any time on 15.12.2023, FIR was lodged.

5. Mr. Satkar would submit that the issue between the parties pertain to a dispute resulting in filing of the said FIR by the first informant. He would submit that Applicant is ready and willing to abide by any conditions whatsoever that would be imposed on him by the Court and the Court should consider the present Application for grant of bail on humanitarian grounds since the Applicant and first

informant also have a minor daughter. He would submit that Applicant is ready and willing to stay with the family and provide care and support to them on any terms as deemed fit by the Court. He would persuade the Court to consider the long incarceration of the Applicant from 15.12.2023 for a period of 1 year and 2 months and the probability of the trial not being completed in the foreseeable future as the ground for his release on bail.

6. Mr. Karmakar, learned APP would submit that the crime of the Applicant is against the society at large and cannot be viewed in the realm of a singular act for which the Applicant is now feeling remorseful or otherwise. He would submit that gravity of the offence be considered by the Court in the light of the said act and the provisions of the Special Act applied for which the Applicant *prima facie* has no defence whatsoever. He would also inform the Court that Applicant has not only threatened the minor victim but he also abused and assaulted the minor victim and also abused and beat the first informant. Hence, he would submit that no leniency whatsoever should be shown by the Court to Applicant.

7. Ms. Cheema, learned appointed Advocate for the first informant would submit that she has taken instructions from the first informant and persuade the Court to consider the gravity of the offence as it happened. She would submit that there is absolutely no

marital discord or dispute alleged by the Applicant between the parties and the act of the Applicant is nothing but a grievous and heinous act which should not be pardoned by the Court, even for considering bail. She would submit that the defence of the Applicant about the alleged marital discord or dispute is nothing but a camouflage to seek bail and get released from incarceration. She would persuade the Court to consider the fact that Applicant was the stepfather of the minor victim and in that view of the matter, his act as father or rather stepfather ought to have been responsible and dutiful rather than the manner in which he has behaved. She would draw my attention to the three specific documents appended to the Application: firstly the medical report appended at page No. 163, statement under Section 164 of the victim at page No. 59 and the statement of the victim recorded by the Department of Psychiatric at page No. 65. She would persuade the Court to go through the same and reject the Application of the Applicant in the facts of the present case as what is stated therein and the trauma suffered by the victim would shock the Court's conscious.

8. Having considered the submissions advanced by learned Advocates appearing for the respective parties and the documentary material placed on record, *prima facie*, I do not have the slightest doubt in my mind that the Act of the Applicant deserves any consideration for grant of bail. It needs to be stated that the act of the

Applicant is an act which cannot be considered to be an act which happened at the spur of the moment or a singular act which can be pardoned by the Court. This is a designed act *prima facie* committed with a pervert mind by the Applicant. The pain and trauma that would have been experienced by the victim boy who is 13 years old when the incident took place, the abuses, beating and threatening suffered by him can only be imagined when seen from the medical report and the Section 164 statement of the Applicant if perused. At the stage of bail, *prima facie* material placed before me clearly show that the minor victim was clearly abused, assaulted and threatened by the Applicant deeply impacting his body and mind. This is proved by the fact that on the date of the incident when the victim's mother had returned back from her work, the mother after looking at the face of the victim could clearly gauge that he was in trauma and had cried on that day and therefore she asked the victim as to whether he had cried on that day and what was the reason for the same. However the victim boy mustered courage to lie to his mother on that day only because of the abuses, threat and the beating that he received from the Applicant and told her that his father had scolded and beaten him on that date. The reflection of the behaviour of the victim on the date of the incident clearly mirrors on the date when the said incident was disclosed by him to his mother on which date merely on hearing that the Applicant

was coming home, it sent shivers to him and he passed out there itself. The victim boy's age is such that he has precisely narrated the incident and his Section 164 statement clearly corroborates the version of the first informant. In that view of the matter, Applicant does not deserve any sympathy. Hence, his Application for bail stands rejected.

9. This Court appreciates the efforts put in by Ms. Cheema, learned Advocate appointed by High Court Legal Services Committee, Mumbai to represent and espouse the cause of Respondent No. 2. This Court direct the High Court Legal Services Committee to pay the fees to the learned appointed Advocate on production of server copy of this order as per rules.

10. Bail Application is disposed.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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