

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 309 OF 2025

Sahabuddeen Akbarali Shaikh

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Taukir Siddiquee, Advocate for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent No.1 – State.
- Mr. Saurish Shetye, Appointed Advocate through Legal Aid for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 17, 2025

P.C.:

1. Heard Mr. Siddiquee, learned Advocate for Applicant, Mr. Karmakar, learned APP for Respondent No.1 and Mr. Saurish, learned appointed Advocate for the Respondent No.2.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.181 of 2022 registered with Pelhar Police Station, Palghar for offences punishable under Sections 376-D and 506 of the Indian Penal Code, 1860 (for short '**IPC**') read with Sections 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (for short '**Black Magic Act**'). Applicant is arraigned as Accused No.2. Applicant is arrested on 27.02.2022.

3. FIR was lodged on 26.02.2022 by First Informant, aged 20 years, a resident of Sagpada, Shriram Nagar, Nalasopara. She lived there with her parents and brother. It is stated that she was feeling unwell and did not have much of an appetite so her mother took her to a local doctor but despite allopathic medicines it was of no avail. On 23.02.2022, at 08:00 p.m., her mother took her to the co-accused i.e. Accused No. 1, who was a local teacher/preacher in a Madrasa in their area. From 23.02.2022 till 26.02.2022, the Accused No.1 tried various practices and incidents on her that came under the purview of Black Magic Act, 2013. For the first two days, he called her on phone and asked her to come to the Madrasa, did things like chanting mantras, rotating lemons in front of her face and forced her to take some tablets and specific baths to earn her confidence in his healing ability. Eventually, it was of no use as she felt no improvement in her health.

4. On 26.02.2022, she was once again asked to come to the Madrasa in the morning where Accused No.1 outraged her modesty by touching her inappropriately under the pretext of curing her problem. He then called Applicant (Accused No.2) to gain her confidence and told him about her condition and kept the call on speaker phone for him to speak to her. Applicant spoke to her to win her confidence and asked her to bring 6 lemons and one *duppatta* with her and visit his place. At 12:30 p.m. she was taken by Accused No.1 to the incident

spot (Madrassa of Applicant) alone by hoodwinking her mother under the pretext of treating her.

5. Applicant – Accused No. 2 performed some kind of black magic on her by using her *duppatta* and 6 lemons. He then outraged her modesty and had forceful physical relationship with her against her consent despite taking she resisting. Thereafter, the Accused No.1 came inside and even he under the pretext of healing her assaulted her against her wishes. After they both were done, Applicant told her that the black magic cast on her was removed. On arriving back home her body began to pain so she told her mother about the whole incident post which the FIR was filed immediately on the same day and the Applicant was arrested.

6. Mr. Siddiquee, learned Advocate of the Applicant (Accused No.2) has vehemently argued before the court that there has been delay in filing of the complaint with no evidence which could *prima facie* create doubt about involvement of Applicant in the incident. That apart, he would submit that investigation of the crime has been completed but no charges have been framed by the Sessions Court till date. Next he would submit that prosecution has not presented any CDR/SDR reports that would show that Applicant was present at the crime scene. He would submit that there had been frequent altercations between the family of Informant and Applicant regarding

noise disturbance from the tuition students studying in the Madrasa. Hence with a *malafide* intention of taking revenge her family through the prosecutrix wrongfully framed the Applicant in this severe offense. He would submit that since investigation is over there is nothing left to be recovered or discovered. He would submit that Applicant has been incarcerated since 27.02.2022 i.e. more than 3 years and 1 month due to his false implication in the present crime and considering the aforementioned, Applicant be released on bail.

7. Mr. Karmakar, learned APP has countered the submissions made by Mr. Siddiquee by drawing attention of Court to the gravity of the offence. He would submit that the victim despite taking medical treatment from medical professionals had severe loss of appetite for many days. Therefore, she was taken to the Accused No.1 by her mother in goodwill and hope that her daughter could be treated. Accused No.1 under the pretext of treating her earned her confidence and outraged her modesty. Then he induced and lured her with sinister motive and took her alone to Applicant's Madrasa in Gaurinaka Rashid Compound, where Applicant also under the pretext of healing her outraged her modesty forcefully. The victim was lured by Applicant with the excuse of reversing the black magic cast upon her by assaulting her and next by committing sexual intercourse with her against her wishes. Hence he would submit that considering the

severity of the offense, Bail Application be rejected.

8. Mr. Shetye, learned Advocate for Respondent No.2 has adopted the submissions made by Mr. Karmakar, learned APP and for the sake of brevity the same are not reproduced herein. In addition thereto, the gravity of the offence qua the deception of the victim on the pretext of her medical treatment is pleaded by him and he would contend that the heinous act of Applicant clearly disentitles him for bail as he would be a potential threat to the Society at large.

8.1. He would draw my attention to the fact that on the day the prosecutrix was taken to the Madrasa of Applicant i.e. 26.02.2022, at 12:30 pm, the Applicant informed his students to leave. He would submit that some students viz; Asif, Sadaf and Tausif, have recorded their witness statements stating that Accused No.1 came to the Madrasa on that day with the prosecutrix and thereafter Applicant told them to leave. Hence he would submit that act of Applicant was planned, motivated and designed to assault the prosecutrix and it is a crime committed against the society at large and there is every chance that he will reoffend himself. He would submit that because of his influential position, he would also be a potential threat to the prosecutrix victim and her family during the pendency of the trial. Therefore his Bail Application should not be allowed.

9. With the able assistance of the learned Advocates at the Bar, I have perused the record of the case and considered their submissions.

10. From the record of the case and the above submissions made, what impels me to reject the Application of the Applicant is the gravity and severity of the crime committed by the Applicant with the aid of Accused No.1 with a predesigned notion. Though according to Mr. Siddiquee, record does not show any *prima facie* evidence of injuries indicating that Applicant committed any forceful act on the victim implying that there was no resistance, however, on going through the Medical reports, it is seen that they are *prima facie* to the contrary. Record clearly spells out duly corroborated by witness statements that they are *prima facie* reasons to believe that prosecutrix was lured, induced, dominated and intimidated under the pretext of curing her ailment by the Applicant and Accused No.1. Further, if Applicant is released on bail, there is every chance that he may threaten her family and pressurize her as well as the prosecution witnesses.

11. Though this Court is equally conscious that bail is the right of the Applicant who is incarcerated for long, pending trial, equally the scale of balance tilts in favour of the prosecution in this case even at the stage of bail. In the present case there is every possibility that if Applicant is released on bail he will re-offend himself as the nature of

the crime suggests and the position of the Applicant as a teacher / preacher in the Madrasa where young minds go for learning and development without being aware of or being least oblivious of the sinister motive of the Applicant before me might suffer the consequences. The parents of the young students depose and express hope and full confidence in the teacher / preacher of the Madrasa in the hope of their children being tutored to learn moral ethics and values and become good citizens. A teacher / preacher or in-charge of a Madrasa is a role model for the students who attend. That faith and hope has got eroded in the present case. Also under the pretext of teaching students in the Madrasa, the Applicant is *prima facie* found to have been practicing black magic in the area. This is the grave concern which persuades me to reject Applicant's Bail Application. I am of the opinion that he will be a potent threat to the society at large and would exploit the vulnerability of victims such as the prosecutrix which cannot be ruled out on *prima facie* consideration.

12. Hence, considering the gravity of the offence seen from *prima facie* facts as well as invocation of the provisions of Black Magic Act, 2013, the Applicant's plea for bail is rejected by the Court.

13. This Court appreciates the efforts rendered by Mr. Shetye. Fees of Mr. Shetye, learned Advocate appointed through Legal Aid to represent and espouse the cause of Respondent No.2 prosecutrix 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.

14. With the above observations and findings, Bail Application is dismissed.

[MILIND N. JADHAV, J.]

Ajay

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AMBERKAR

Digitally signed
by RAVINDRA
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