

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1002 OF 2025

Taufiq Hasan Raju Hasan Syed

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondent

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- Mr. Hasan Syed a/w. Mariya Khatkhatay, Advocates i/by Shubi Q Z Syed for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent No.1.
- Mr. R. A. Shaikh, Advocate i/by Mr. Abdul Rehman Khan for Respondent No.2.
- PSI – Sanjay Namdeo Gaonkar, Mankhurd Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2025

P.C.:

1. Heard Mr. Syed, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent No.1 and Mr. Shaikh, learned Advocate for Respondent No.2.

2. This is an Application under Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with C.R. No.143 of 2024 registered with Mankhurd Police Station for offences punishable under Sections 377 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. Applicant is step-father of victim who is a 10 year old boy. The First Informant is mother of the victim. Applicant was arrested on

15.04.2024 in the present C.R. under Sections 377 and 506 of the IPC and 4, 6, 8, 10 and 12 of the POCSO Act. The First Informant filed a complaint on 15.04.2024 after learning from her mother about the incident which happened with the victim some time in November - 2023. It is stated in the First Information Report (for short 'FIR') appended at page No.24 of the Application that some time in November – 2023 the First Informant was admitted to Sir J. J. Group of Hospital for diabetes treatment and the First Informant was accompanying and staying with her in the hospital, at that time Applicant committed the alleged incident of outraging the modesty of the victim by indulging in unnatural sexual activity with victim in absence of First Informant in the house.

4. *Prima facie*, on reading of the statement of the First Informant and the statement of the victim recorded on the following day appended at page No.38, an impression would be conveyed about the happening of the incident. Though *prima facie* there is delay in filing of the FIR and it may not be fatal to prosecution case, this Court is not oblivious either to the provision of Section 29 of the POCSO Act which contains a legislative mandate that the Court shall presume commission of offences by Accused unless the contrary is proved *prima facie*. Section 29 of the POCSO Act states that where person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the POCSO Act, the Special

Court shall presume that such person has committed or abetted to commit the offence as the case may be unless the contrary is proved.

5. This legislative mandate has been taken into consideration by the Supreme Court in the case of *State of Bihar Vs. Rajballav Prasad alias Rajballav Prasad Yadav alias Rajballabh Yadav*¹. *Prima facie*, it is seen that statutory presumption under Section 29 of the POCSO Act does not mean that the prosecution version has to be accepted as gospel truth in every case.

6. Learned Advocate for Applicant, learned APP for Respondent No.1 and learned Advocate espousing cause of Respondent No.2 – First Informant have taken me through the record of the case. Appended at page No.45 of the Application is the statement of mother of the First Informant and when the said statement is *prima facie* read it is seen that in this statement for the first time duration and intensity of the alleged incident having taken place in November – 2023 is narrated and informed to her by the victim. The duration appears to be on 3 occasions as stated therein. This dichotomy is noticed at the outset itself.

7. What needs to be *prima facie* seen for corroboration are the statements in the medical examination of the victim and *medico-legal* papers which record substantive details, statements, as also the details

¹ (2017) 2 SCC 178.

of not only the incident but the alleged injuries. The victim has undergone medical examination in two hospital namely on 16.04.2024 and 18.04.2024 one in the BMC Hospital and second in the Sir J. J. Group of Hospital.

8. *Prima facie*, if the said Medical report is seen, it is stated in the medical record that victim had suffered a history of bleeding in his rectum for 4 to 5 days post the incident as stated by the victim himself, as also by the First Informant on behalf of the victim in her statement that is recorded. There is however no *prima facie* evidence whatsoever of this particular fact or injury suffered by the victim or even stated or mentioned by First Informant which goes to the root of matter. *Prima facie*, it is seen that First Informant has separated legally from the Applicant on 07.03.2024 pursuant to which on 15.04.2024, the present complaint has been filed. Mr. Shaikh, learned Advocate for Respondent No.2 has fairly submitted that there is no mention of the aforesaid alleged injury or any record thereof to support prosecution case. Hence *prima facie* this appears to be a fall out of the separation of the First Informant from the Applicant. Medical reports state no injury whatsoever. Considering the aforementioned *prima facie* observations Applicant has made out a case for grant of bail. Bail Application is allowed subject to following conditions:-

- (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 is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) 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;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) 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;
- (vi) 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;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence 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.

9. 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.

10. Bail Application No.1002 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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