

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1046 OF 2025

Shailesh Rajendra Lavania

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

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- Mr. Vaibhav Bagade a/w Mr. Aman Kothari & Mr. Gaurav Kalekar for Applicant
- Mr. Balraj B. Kulkarni, APP for Respondent No. 1 - State
- Mr. Ganesh Gupta a/w Mr. Surya Prakash Gupta, Mr. Sahil Ghorpade, Mr. Madan Khansole & Ms. Priynka Rathod i/by GG Legal Associates for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2025

P. C.:

1. Heard Mr. Bagade, learned Advocate for Applicant; Mr. Kulkarni, learned APP for Respondent - State and Mr. Gupta, 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, 1973 (for short, "**Cr.PC.**") in connection with C.R. No. 271/2024 registered with Kandivali Police Station, Mumbai for offences punishable under Sections 323, 506(II) and 34 of the Indian Penal Code, 1860 (for short, "**IPC**"), under Sections 8 and 12 of the Protection of Child from Sexual Offences Act, 2012 (for short, "**POCSO Act**") and under Section 75 of the Juvenile Justice (Care and Protection of Children) Act,

2015. Applicant is arrested on 09.05.2024 and since then he is in incarceration.

3. First informant - complainant is the father of victim child who is 5 years old. He has lodged the present FIR against Applicant (accused No. 1) and his wife (accused No. 2). Accused No. 2 is the mother of victim. According to prosecution case, accused Nos. 1 and 2 are involved in a physical relationship with each other which is borne out from record, as also acknowledged by accused No. 2 herself in her statement. That apart 5 year old victim boy has also recorded his statement under Sections 161 and 164 of Cr.P.C. before the Police Officer and the Magistrate and on reading the answers given by him, it is *prima facie* clear and evident that accused Nos. 1 and 2 were in a relationship since long and also stayed for sometime together. The issue came to the fore sometime in March 2024 when accused No. 2 along with her sister and the sister's boyfriend visited Vaishnodevi and returned back to Delhi. At that time she was accompanied by her son also. Record unearthed by prosecution on the basis of the witness statements as also the statement of co-accused shows that Applicant i.e. accused No. 1 was also part of the group who had returned back from Vaishnodevi to Delhi along with them.

4. The 5 year old victim son narrated the aforesaid facts in his statement which have been read by Mr. Bagade, learned Advocate for

Applicant as also substantially relied upon by Mr. Gupta, learned Advocate for Respondent No. 2 - first informant in support of his case. It is alleged by first informant that accused No. 2 is no longer staying with him is / was and in fact staying with accused No. 1 after the said incident of having returned back from Delhi to Pune. Thereafter it is alleged by first informant that the victim informed him that accused No. 1 i.e. Applicant had slapped him and pulled his private part and threatened him not to disclose the act to anyone. This is the entire sum and substance of the prosecution case against Applicant.

5. Accused No. 2 is released on bail. Investigation is completed and chargesheet has been filed against the accused persons. Mr. Bagade has taken me through the prosecution case emanating from the chargesheet and fulcrum of his argument is based on the answers given by victim in his Section 161 statement as also Section 164 statement which are appended to the chargesheet. He has drawn my attention page Nos. 27 and 28 of the Application which is recording of the statement of victim on 01.04.2024 and page Nos. 29-31 which is recording of his statement on 08.05.2024 and Section 161 statement recorded on 13.05.2024. *Prima facie* on reading the three statements in which there appears to be consistency, but what emanates from them is the fact that the victim boy realized and came to know about the intimacy and physical relationship of his mother i.e. accused No. 2

with accused No. 1 and this fact was disclosed by him to the first informant - father subsequent to which there was a verbal altercation between the father and mother. Record of prosecution shows that first informant insisted on the victim boy staying with him and informed accused No. 2 to go and stay with accused No. 1 if she desired.

6. Mr. Gupta, learned Advocate for Respondent No. 2 - first informant would persuade me to consider the material on record. He would submit that first informant - being father of the victim had to undergo considerable ordeal in order to get the complaint registered and had to run from pillar to post. He would submit that first informant had no other alternative than to file the complaint and considering the age of the victim, Court should reject the Application for bail of Applicant.

7. *Prima facie* the medico legal examination paper of victim which are appended to the Application and chargesheet bear out the allegation of sexual assault but the conclusion in the medical legal papers is not conclusive at all since no injuries are noted neither any history of any assault is opined therein. In fact intriguingly the medical legal examination history *prima facie* improvises the contents of the statement of the victim which are recorded under Section 161 as also Section 164 of Cr.P.C. substantially by narrating some gory details which are *prima facie* absent and missing in the three

statements of the victim which are recorded by prosecution. Such absurdity and alleged infirmities as projected to constitute the principal cause of action when noticed, *prima facie* does not inspire the confidence of Court at the initial stage of bail on the basis of the material placed on record. *Prima facie* opinion of this Court is that the filing of the alleged complaint appears to have been triggered upon the disclosure of relationship between accused No. 2 - wife and Accused No. 1 which forms the fulcrum of the prosecution case. In that view of the matter and considering the above *prima facie* observations, I am inclined to release the Applicant on bail. 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. 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 tamper with the prosecution evidence and give give threat to first informant, any of the

prosecution witnesses or any person acquainted with the facts of the case;

(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.

8. 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.

9. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

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by RAVINDRA
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