

Shivgan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3362 OF 2025

Abdul Muka Shaikh @ Sameer Diwana ...Applicant
Versus
State of Maharashtra & Anr. ...Respondents

Ms. Sharanya Vast, with Disha Deshmukh, Surbhi Jain and Devesh Singh, for the Applicant.
Mr. S.S.Ghag, APP for the Respondent-State.
Mr. Veerdhawal Deshmukh, for the Respondent No.2.

CORAM: R. M. JOSHI, J.
DATED: 26th MARCH, 2026.

PC:-

1. This Application is for regular bail in connection with Crime No. 469 of 2023 dated 22nd June 2023 registered with the Tilak Nagar Police Station, Brihanmumbai Shahr for the offences punishable under Sections 376, 376(2)(f), 376(2)(j) of the Indian Penal Code, 1860 ('IPC') and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
2. On 22nd June 2023, the Victim aged about 16 years and 7 months, lodged report with the concerned Police Station, stating that her father against her wish established physical relations with her. This was disclosed by her to the medical officer when she was taken for medical examination on 21st June 2023, i.e., before

lodging of the First Information Report. In the report, allegations are also made against the present Applicant that he forcibly had sexual intercourse with the Victim. The Applicant came to be arrested in connection with this crime. On conclusion of investigation, charge-sheet is filed.

3. Learned counsel for the Applicant drew attention of the Court to the statement made by the Victim before the medical officer on 21st June 2023 to the effect that her father had sexual intercourse with her. Similar is the statement made by her on 23rd June 2023. In both these statements, it is not alleged against the Applicant that he is the one, who has had forcible sexual relations with her. Apart from this, it is argued that the DNA Report indicates that the father of the Victim to be the biological father of the fetus. It is her submission that having regard to these facts, the case of the prosecution does not deserve acceptance. The Applicant has no criminal history. As the trial is not likely to get over within a reasonable period of time, she seeks enlargement of the Applicant on bail.

4. The learned APP and learned counsel for the Respondent No.2 oppose the Application.

5. Unless, the evidence of Victim of a crime of sexual assault is free from doubt, it cannot become sole ground for conviction of the Accused, is a settled principle of law. Herein in this case, *prima facie* perusal of the record indicates that on 21st June 2023, i.e., before lodging of the report when the Victim was taken to the Doctor, she gave history to the medial officer indicating that her father had sexual intercourse with her. This coupled with the DNA

Report excludes the paternity of the Applicant in respect of the said fetus. *Prima facie*, suffice it to say that evidence of the Victim is not consistent at all stages of investigation and as such, has rightly argued by learned counsel for the Applicant that serious doubt is created with regard to the correctness of the case of the prosecution. The Applicant has no criminal history. The Trial is not likely to get over within a reasonable period of time. Hence, the following order:-

ORDER

(i) The Bail Application stands allowed in connection with Crime No. 469 of 2023 dated 22nd June 2023 registered with the Tilak Nagar Police Station, Brihanmumbai Shahr;

(ii) The Applicant be released on bail on furnishing P. R. bond in the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the Trial Court;

(iii) The Applicant not to contact the Victim or any witness in any manner whatsoever;

(iv) The Applicant to attend all the dates of hearing before the Trial Court unless exempted by a specific order passed by the Trial Court.

6. The Bail Application stands disposed of.

(R. M. JOSHI, J.)

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signed by
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