

MHCC050001942021



**IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION
OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AT
BORIVALI DIVISION, DINDOSHI, MUMBAI
BAIL APPLICATION (EXHIBIT-12)
IN
POCSO SPECIAL CASE NO.20 OF 2021**

Aniket Bhaidas Netale

Age : 21 Years.

R/o. Kesar Bhai Chawl, Telli Gally,
Opp. Bhagavati Building, Shankar Mandir,
Sahar Road, Andheri (E), Mumbai-400 069.

....Applicant/accused

V/s.

**The State of Maharashtra
(Through Andheri Police Station)**

.....Respondents

Advocate Mr. Vikas Singh for Applicant/original accused.

APP Mrs. Geeta Malankar for State.

Advocate Mr. R. K. Chaudhary for Informant.

**CORAM: H.H.THE SPECIAL JUDGE,
SMT. H.C. SHENDE, (C.R.NO.11)
DATE : 22nd January, 2021**

ORDER

The applicant has moved this application for grant of bail in C.R. No. 915/20 for the offences punishable U/sec. 354 and 354-A of IPC and u/s.8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (Hereinafter referred to as “POCSO Act” in short) registered with Andheri Police Station.

2. It is submitted through the application and by way of oral submission by the Learned Advocate for the applicant/accused that the applicant is having permanent place of residence in Mumbai. At present he is in judicial custody. The Charge-sheet came on record in this matter. Actually he has been arrested in the matter on the basis of false and frivolous complaint made by the informant. The applicant is a young person aged about 21 years old. He got arrested on 22/11/20 on the basis of false allegations. Actually the victim and the applicant are having friendship in between them. The informant who is the mother of the victim girl was against their relation. May be out of her anger against the applicant, a false FIR was lodged by the informant against the present applicant. As the Charge-sheet has come on record, nothing is required to be investigated from him. He be released on bail. He will abide every term and condition imposed by the Court. He will not flee from law.

3. The prosecution objected the bail application by filing their say at Exh.13. The Learned APP Mrs. Geeta Malankar reiterated the same and resisted the application on the grounds mentioned in the say and further submitted that the applicant and the victim are residing in the same area. Their family members are knowing to each other. The victim is a small girl taking education in 10th Standard. The victim and applicant came in contact with each other. The applicant forcefully entered into the house of the victim girl and started molesting her so she raised shouts. Meanwhile the informant came and knocked the door. The door was opened by the victim. The applicant was behind the door. When the explanation was asked to him by the informant, he tried to give reason that he came to drink the water and fled away from the spot so initially the FIR was lodged u/s.354 and 354-A of IPC and u/s.8 and 12 of POCSO Act. During

investigation, the victim gave information that she was taken for playing game under the bridge and the applicant has committed sexual relations with her forcefully there so the offence u/s.363, 376(2)(n), 376(3) of IPC and the offences u/s.3(A), 4, 5(L) and 6 of POCSO Act are added in the matter. The date of birth of the victim girl is 30/04/2006. It means that she was of 14 years and 7 months at the relevant time. The applicant if released on bail, he will contact with the victim, may pressurize to her, may commit any other offence with her so he should not be released on bail.

4. Heard both sides at length.

5. Perused the record, photographs annexed with the Chargesheet by the prosecution so also the medical history given by the victim girl to the medical officer during her medical examination. The medical history runs as :

“Survivor knows the accused as he lived in the same locality just opposite to their house as their neighbour. The victim and the applicant became friends. They were in relationship since last one and half year. Further history given by the victim that there were total 3 episodes of non-consensual intercourse with accused in the month of October. The exact date is not known to her. First was taken place below the bridge near the house of the survivor at around 5.30 p.m. to 6.00 p.m. in the evening. During first incident there was peno-vaginal and peno-anal intercourse using condom which was intact. The next two incidents were peno-vaginal using condom which was allegedly torn. There is no history of any verbal or physical abuse. No external injuries were shown. The hymen injury is noted as old healed hymenal tears at 5 and 7 o'clock.”

The record, therefore, suggesting that there is something else than reported in the FIR. It has not been narrated by the victim that she was at any time forced or put under fear by the applicant. On the backdrop of the photographs annexed by the prosecution with said Charge-sheet showing some different aspects of the matter, and as the Charge-sheet also came on record, I am of the opinion that further actual physical custody of the accused is not required. He can be released on bail. At the same time on the backdrop of submissions made by the prosecution and apprehension put up by them so also considering the age of the applicant who is 20 years old and the above reasons, this Court is of the opinion that he can be released on bail by imposing strict conditions to be followed by him and by taking heavy surety from him.

6. In above circumstances and for the reasons mentioned above, the Court proceeds to pass the following order :-

ORDER

1. Bail Application **Exhibit-12** is allowed.
2. **The applicant/original accused Aniket Bhaidas Netale be enlarged on bail on executing Personal Bond of Rs.25,000/- with one or two solvent sureties** in the like amount in C.R.915/20 for the offences punishable U/sec.354 and 354-A of IPC and u/s.8 and 12 of the Protection of Children from Sexual Offences Act, 2012 registered with Andheri Police Station on the following conditions :-
 - a) He shall not threaten or cause any harm to the informant, victim and her family members in any manner. He shall not contact her in any way, not even through social media. **He shall withdraw himself from the area where the victim girl is residing, her school/college/class is located.**

- b) He shall not tamper with the prosecution evidence and threaten the informant, victim and the witnesses.
- c) **He shall attend the concerned police station once in two months on Wednesday between 5.00 p.m. to 7.00 p.m. and as and when called by the investigating officer till completion of trial. He shall co-operate to the trial.**
- d) He shall provide his registered residential address in Mumbai, native address proof as well as service place address proof and contact numbers and registered detailed residential address and phone number of his surety and his two near relatives at native within two weeks to the Investigating Officer.
- e) He shall not leave jurisdiction of the Court and India without permission of the Court till completion of trial.
- f) He shall attend the Court regularly on the date fixed and shall not remain absent for hearing unless exempted by the Court through his Advocate.
- g) He shall not commit similar offence again.
- h) The near relatives of the applicant to execute affidavit-cum-undertaking with identity, before the I.O. of concerned Pl. Stn. stating that he will take care of applicant, shall quarantine him in the house for 14 days after his release, the applicant will obey all conditions imposed in bail order of this Court.
- i) **The jail authority is directed to get the medical test of the applicant be done and be released him with the report only if he is not suspected of N-COVID 19. Otherwise he should not be released.**

j) On violation of any above conditions, bail shall stand cancelled without intimation.

3. Bail Application Exhibit-12 stands disposed of accordingly.

Date : 22.01.2021

**(H. C. SHENDE)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai**

Dictated on : 22.01.2021
Transcribed on : 27.01.2021
Checked and corrected on : 27.01.2021
Signed on : 27.01.2021
Sent to Dept. on :

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE
AND TIME : 27/01/2021 at 3.37 p.m.

Mrs. Vidya Pendharkar
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ H.C.SHENDE (Court Room No.11)
Date of Pronouncement of Judgment/Order	22/01/2021
Judgment/Order signed by P.O. on	27/01/2021
Judgment/Order uploaded on	27/01/2021