

MHCC050056382021



**IN THE COURT OF SPECIAL JUDGE UNDER THE
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT, 2012 AT BORIVALI DIVISION, DINDOSHI, MUMBAI
BAIL APPLICATION (EXHIBIT-3)
IN
POCSO SPECIAL CASE NO.436 OF 2021**

Mohammed Uzair Mohammed Mujeeb Syed

Age : 19 Years, Occ. : Unemployed.

R/o. : Room No.303, 3rd Floor,
Building No.C/1, Millat Nagar,
Swami Samarth Nagar, Oshiwara,
Near Lokhandwala Complex,
Andheri (W), Mumbai-400 053.

....Applicant/accused

V/s.

The State of Maharashtra

(At the instance of Malwani Police Station)Respondents

Advocate Saroj for the applicant/accused.

Spl.A.P.P. Mrs. Geeta Malankar for the State.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE,
SMT. H.C. SHENDE, (C.R.NO.11)**

DATE : 12th November, 2021

O R D E R

The applicant has moved this application U/section 439 of the Code of Criminal Procedure 1973 (hereinafter referred as “Cr.P.C ”) for grant of bail in C.R. No. 1160/21 for the offences punishable u/s. 363, 366-A, 368, 376, 376(2)(n), 376(3) of Indian Penal Code and u/s.4, 5(L),

6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO Act” in short) registered with Malwani Police Station.

2. By way of this application and through oral submissions, it is submitted by the Learned Advocate for the applicant/accused that the applicant/accused is an innocent person. He is also aged about 19 to 20 years old. He is having problem of hyper thyroid and due to it he is facing problem of bed wetting. Said accused due to said medical condition, needs continuous medical treatment. He is not in a position to adjust himself without any special medical treatment and care. The statement of the victim girl is self-suggesting that she was in relationship with the applicant from the past one or more years. She herself went with the applicant, roamed everywhere. She nowhere is saying that those were forceful relations. Earlier statement given by her is clearly outcome of manipulation made by the family of the victim and the police for taking cognizance. Now the Chargesheet came on record. Nothing is remained to be investigated into or to be recovered from him. He will abide every term and condition if released on bail. He will furnish surety as directed by the Court. He will not flee from law so he be released on bail.

3. The prosecution, per contra, resisted the bail application by filing the say at Exh.4. The Learned APP Mrs. Geeta Malankar relied on the said grounds of objection and submitted that the victim of the matter is aged about 15 years only. She was too small. He took her away from her parents and by saying that he will soon get marry with her, has committed forceful sexual relations with her against her wish. The accused if at this

stage, released on bail, then he may flee from law. He may commit same crime again and again and it would cause hurdle in trial of the matter so he should not be released on bail.

4. Heard both sides at length. Perused the record.

5. No doubt earlier bail application was rejected on 16/09/21 as at that time the crime was under investigation. The victim in her statement dated 15/08/21, disclosed that one day she went to roam with her friends. Her family members were calling her repeatedly so she got annoyed and decided to roam at another place. Suddenly she met with said accused. She herself put up request before him that they would go for roaming. Accordingly they went to Ahmedabad and Ajmer. The applicant took her to his house and told that he was not having money so she herself transferred Rs.8,000/- through Googlepay from the account of her mother to the account of the accused.

6. Further according to the victim, they have hired one room where they stayed for some time. She made one line statement that the accused had forceful sex with her against her wish. We cannot overlook earlier and next conduct of the said victim girl and the history given by her before the medical officer. She was of 15 years old at the relevant time when they went to Ajmer but apparently, she was not too minor.

7. Apart from everything, the accused is also a boy aged about 19 years old. The Chargesheet has also come on record. The record prima facie suggesting that they were knowing to each other since long. The trial

will also take some time. Considering the lock down taken place in the last one and half year, the matters are stuck up so I am of the opinion that the applicant can be released on bail with certain strict conditions to be followed by him.

8. Hence, in the circumstances and for the reasons mentioned above, this Court proceed to pass the following order :

O R D E R

1. Bail Application **Exhibit-3** is allowed.
2. **The applicant/original accused Mohammed Uzair Mohammed Mujeeb Syed be enlarged on bail on executing Personal Bond of Rs.30,000/- with one or two sureties in the like amount** in C.R. No.1160/21 for the offences punishable U/sec.363, 366-A, 368, 376, 376(2)(n), 376(3) of IPC and u/s.4, 5(L), 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 registered with Malwani Police Station on the following conditions :-
 - a) He shall not contact, meet, threaten or cause any harm to the informant, victim and her family members in any manner. He shall not contact to victim through social media.
 - 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 after his release once in two months on Thursday between 5.00 p.m. to 8.00 p.m. and as and when called by the investigating officer till completion of 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 Mumbai 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-3 stands disposed of accordingly.

Date : 12.11.2021

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

Dictated on : 12.11.2021
Transcribe on : 15.11.2021
Checked and corrected on : 16.11.2021
Signed on : 16.11.2021
Sent to Dept. on :

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

UPLOAD DATE
AND TIME : 16/11/2021 at 3.17 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	12/11/2021
Judgment/Order signed by P.O. on	16/11/2021
Judgment/Order uploaded on	16/11/2021

BA Exh.3 in Spl.436/21

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ORDER