

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1189 OF 2021

Mohammad Ahmed Ulla ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. R.V.Gupta for the Applicant.

Smt. P.P.Shinde, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 27th AUGUST, 2021.

P.C. :

Heard.

2 Applicant seeks his enlargement on bail in Crime No.438 of 2020 dated 29th July, 2020 registered at the instance of mother of the victim for the offences punishable under Sections 354, of the Indian Penal Code, 1860 and Section 8, 9(m), 10 and 12 of the Protection of Children From Sexual Offences Act, 2021 ('POCSO' for short).

3 Applicant is 46 years old person. He runs a chicken centre. Victim at the material time was 8 years old girl. Her mother lodged First Information Report. She stated, applicant touched cheeks of her daughter inside the shop premises, where he was running the business. Whereafter, applicant was arrested. Investigation in the case is over and the final report has been filed.

4 Section 7 of the POCSO Act reads as under:

“7 Whoever with sexual intent touches the vagina, penis, anus, or breast of the child or makes the child touch the vagina, penis, anus, or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

. In my view, touching the cheeks without a sexual intent would not attract the offence of ‘sexual assault’, as defined under Section 7 of the POCSO Act. Primary evaluation of the material on record does not suggest, applicant allegedly touched the cheeks of the victim with a sexual intent. He is

in custody since July, 2020. Although, the complainant was impleaded as respondent, it appears from the orders passed by the Court that complainant had requested prosecutor to argue on her behalf.

5 In consideration of these facts, in my view, case is made out for releasing the applicant on bail. Hence, the following order:

ORDER

(i) The applicant in Crime No. 438 of 2020 registered with Rabodi Police Station, Thane, he shall be released on executing PR bond for the sum of Rs.25,000/- with one or more sureties in like sum.

6 The application is accordingly allowed and disposed of.

7 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)