

nsc.

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

CRIMINAL BAIL APPLICATION NO.98 OF 2015

Abu Salem Kamal Ahmed Faruqui ...Applicant

V/s.

The State of Maharashtra ...Respondent

***WITH
CRIMINAL APPLICATION NO.649 OF 2015
IN
CRIMINAL BAIL APPLICATION NO.98 OF 2015***

Naved Abdul Hameed Khan ...Applicant/Intervener

IN THE MATTER BETWEEN

Abu Salem Kamal Ahmed Faruqui ...Applicant

The State of Maharashtra ...Respondent

Mr.Amanat Ullah Khan, for the Applicant.

Ms.A.A.Mane, APP for the Respondent – State.

Mr.Fakhruddin Khan, for the Intervener/Complainant.

CORAM : REVATI MOHITE DERE, J.

DATED : 8th JANUARY, 2016.

P.C. :

1. Heard learned counsel for the Applicant, learned counsel for

the complainant and the learned APP for the Respondent - State.

2. This is the third bail application preferred by the applicant. The first bail application filed in this Court, being being Bail Application No.69 of 2014 was withdrawn with liberty to file a fresh application before the Sessions Court, as the Special Court had observed that POCSO Act would not apply retrospectively to the facts of the case. It was also clarified by this Court (Coram:Smt.Sadhana S. Jadhav, J.) vide order dated 21st February, 2014 that the bail application was not considered on merits. Thereafter, the applicant filed a second bail application in this Court, being Bail Application No.671 of 2014, which was withdrawn by the Counsel for the applicant. It was recorded in the order dated 28th April, 2014 passed by this Court (Coram:Revati Mohite Dere,J.), that after arguing for some time, the learned counsel seeks leave to withdraw the Application. This is the third application.

3. It may be noted here, that pursuant to the liberty granted by this Court vide order dated 21st February, 2014, the applicant filed an application seeking his enlargement on bail before the Sessions Court,

which was rejected vide order dated 8th April, 2014. The learned Additional Sessions Judge after hearing the parties was pleased to reject the applicant's application for bail vide order dated 8th April, 2014. It was observed by the learned Additional Sessions Judge that the offence registered against the applicant/accused is of a serious nature and considering the fact that the victims were students, there was every possibility of tampering with the evidence. It was also observed that an offence under section 367 was registered as against the applicant.

4. The said order was challenged by the applicant in this Court by filing a second bail application being Bail Application No.671 of 2014. On 28th April, 2014, this Court (Coram. Revati Mohite Dere,J.) had passed the following order:-

“ Heard the learned counsel for the applicant.

2. After arguing the matter for some time, the learned counsel for the applicant seeks leave to withdraw the Bail Application.

3. Accordingly, the Bail Application is dismissed as withdrawn”.

5. Learned Counsel for the applicant submitted that there is a

change of circumstance, inasmuch as, the applicant is languishing in jail without any offence being made out as against him, either, under the Protection of Children from Sexual Offences Act or under the Indian Penal Code. He submitted that neither any offence under Sections 376 or 377 is made out as against the applicant. He further submitted that the first remand which was granted was illegal and accordingly all proceedings thereafter were illegal. He submitted that till date charge has not been framed in the present case.

6. Learned APP and the learned counsel appearing on behalf of the complainant vehemently opposed the bail application. They contended that this was the third bail application preferred by the applicant and that there is absolutely no change in the circumstance, pursuant to the withdrawal of his earlier bail application. They submitted that the applicant is protracting the trial, which is pending before the learned Sessions Judge. They contended that the nature of allegations are serious and that the victims were young students who have been sexually exploited.

7. Perused the papers. It appears that the applicant had filed a

discharge application before the learned Sessions Judge under Sections 227 and 228 of the Code of Criminal Procedure. It was observed that though the crime was not registered under the provisions of Indian Penal Code, the allegations in the complaint and in the discharge application clearly show that an offence under Section 367 of the IPC was made out as against the applicant. Accordingly, the discharge application of the applicant was rejected. The said order rejecting the discharge application was challenged by the applicant in this Court and this Court (Coram:P.D.Kode,J.) vide order dated 20th December, 2014 observed that the order does not reveal any specific material against the applicant in the charge-sheet warranting framing of charge under Section 367 of the IPC, and accordingly quashed and set aside the order of the learned Additional Sessions Judge and the matter was relegated back to the Court of Sessions, for deciding the application i.e. Exhibit – 16 afresh, in accordance with law by giving reasons, as contemplated under the law. It appears that thereafter, pursuant to the said order dated 20th December, 2014, the discharge application was reheard and after hearing the parties, the discharge application was once again rejected by the learned Additional Sessions Judge. I am informed that the said order passed by the learned

Additional Sessions Judge, below Exhibit – 16 has been challenged by the applicant in this Court and is presently pending in this Court.

8. Perused the charge-sheet. The applicant was a teacher in the school at the relevant time when the alleged incident took place. Prima-facie, there are statements of five students who are victims of sexual exploitation by the applicant. Perused the statements of the five victim boys. Prima-facie, a perusal of the said statements discloses the nature of sexual assault by the applicant on the victim boys.

9. Considering the material as against the applicant, this is not a fit case to enlarge the applicant on bail. The possibility of the applicant tampering with the witnesses cannot be ruled out.

10. Accordingly, the Application for bail is rejected and disposed of as such. However, the trial is expedited. In the interest of both, the applicant and the prosecution, the Trial Court is requested to conclude the trial, as expeditiously as possible, and preferably within four months from the date of receipt of this order. If for no fault of the applicant, the trial

does not conclude within the said period, the applicant is at liberty to renew his prayer for bail.

11. It is made clear, that the observations made herein, are prima-facie, for the purpose of deciding only this bail application. It is made clear that the legality of the remand application has not been considered. The trial court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. In view of the disposal of the Bail Application No.98 of 2015, the Intervention Application being Criminal Application No.649 of 2015 does not survive and the same is also disposed of.

13. Parties to act upon the authenticated copy of this order.

(REVATI MOHITE DERE,J.)