

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1764 OF 2019**

Prathamesh Yashwant More

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.Ashok P. Mundargi, Senior Counsel i/b Ms. Shraddha Sawant for the Applicant.

Ms. S.V.Sonawane, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 18th FEBRUARY, 2021

P.C. :

1. Heard learned Counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 153 of 2018 registered with the Sanpada Police Station, Navi Mumbai, for the alleged offences punishable under Sections 376, 323, 506 of the Indian Penal Code; under Sections 3,4,5(L) and 6 of the Protection of Children from Sexual Offences Act, 2012; as well as under Section 67 of the Information Technology Act, 2000.

3. Learned Senior Counsel for the applicant submits that the relations between the victim and the applicant, if any, were consensual in nature. Learned Counsel relied on the statement of the applicant's father in support of the said submission. He further submitted that the mental condition of the applicant is not stable now, nor was it, prior to the incident. Learned Counsel relied on the medical reports of the applicant to show that the applicant has suicidal tendencies and that he had slashed his wrist on many occasions and had even consumed glass pieces. He submits that the applicant was undergoing counselling sessions prior to his arrest i.e. in October and November, 2018, because of his depression and other related issues. Learned Senior Counsel has tendered an affidavit of the applicant's mother – Jyotsna Yashwant More as well as the applicant's father - Yashwant Laxman More. Both the said affidavits are taken on record.

4. Learned APP, although, opposed the bail application on merits, she does not dispute the fact, that the applicant has certain psychological issues and suicidal tendency.

5. Perused the papers. On the last date, notice was issued to the respondent No.2 i.e. prosecutrix. Pursuant to the said notice, the respondent No.2 was served by private notice. Learned Counsel for the

applicant has filed an affidavit of service, which shows that the respondent No.2 is served with the notice on 08/02/2021. Despite service, none appears for the respondent No.2.

6. The applicant, at the relevant time was about 21 years of age and the prosecutrix about 17 ½ years. According to the prosecutrix, she met the applicant sometime in October, 2018 through one of her friends, after which, they exchanged their mobile numbers and Instagram ID and started interacting with each other and became friends. The prosecutrix has alleged that in October, 2018, the applicant called her to his house and had physical relations with her without her consent. It is also alleged that the applicant took objectionable photographs of the prosecutrix and threatened her that he will circulate the said photographs. The applicant is alleged to have had forcible physical relations with the prosecutrix by threatening to make the said photographs/video viral. The said incidents, are stated to have taken place during the period October, 2018 to December, 2018. The statement of the witnesses also shows that the applicant had sent link to some of the friends, however, had later deleted it. The statement of one of the witness i.e. Abhishek Kumar shows that the applicant had slashed his wrist on an earlier occasion i.e. on 26/12/2018. The medical case papers relied upon by the learned Senior Counsel shows that on 28/12/2018, the

applicant was admitted to the hospital as he had attempted to commit suicide by consuming glass particles on 27/12/2018. The discharge summary case papers from the hospital which is on page No.105 of the application records 'history of previous suicidal tendencies present with numerous scars on the forearm'. It also appears that the applicant has been treated at Mansparsh Clinic for psychological issues. The letter of the Clinical Psychologist dated 12/01/2019 shows that the applicant had gone for counselling sessions to the said clinic with his mother. The reason given was inattentive behavior, occasional aggression, career problems, relationship concerns. The said letter also shows that the applicant was counselled on four occasions, i.e. on 08/10/2018, 16/10/2018, 29/10/2018 and 14/11/2018 and that he was doing well. The document at page No.137 of Dr. R.N.Patil's Suraj Hospital dated 21/01/2018 shows that the applicant had 'alprazolam poisoning with psychiatric problems'. Prima facie, having regard to the aforesaid documents, it appears that the applicant has some behavioral issues and was taking treatment even prior to the alleged incident. It also appears that the applicant had suicidal tendencies prior and even after the incident. The document at page No.146 issued to the Lecturer under Psychiatric Department shows that the applicant was taking treatment in the past for ADHD with multiple episodes of impulsive behavior consumption of sleeping pills and clashing etc. it is also stated in

the said letter, that the patient was admitted for impulsive consumption of glass pieces after a fight with a girl and a request was made for evaluating the patient for further management. It is not in dispute that the applicant is in custody since January, 2019 and that investigation is complete and chargesheet is filed. The applicant's parents i.e. Jyotsna Yashwant More and Yashwant Laxman More had filed their affidavits stating that the applicant will not reside in Mumbai or Navi Mumbai District, but will reside with them in Pune, at Chakan. The applicant's parents have undertaken to see that the applicant will not, in any way, contact the prosecutrix or any of the witnesses in the present case and that no hindrance will be caused to the trial court proceedings. The applicant's mother is present in the Court. She undertakes to ensure that the applicant is given psychiatric help/counselling during the said period.

7. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;

- (ii) The applicant shall not enter the jurisdiction of Navi Mumbai/ Mumbai, except for the purpose of attending the trial court;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;
- (v) The applicant shall not tamper with the evidence or attempt to influence or contact the prosecutrix, witnesses or any person concerned with the case;
- (vi) The applicant shall file an undertaking with regard to clause (iv) in the trial Court, within two weeks of his release;
- (vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The application is allowed in the aforesaid terms and is accordingly disposed of.
9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.