

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.09 OF 2021

Prateek Bhatt ... Applicant
Vs
The State of Maharashtra ... Respondent
...

Ms. Shubhangi Parulekar for the Applicant.
Smt. P.N.Dabholkar, APP for the Respondent-State.
Ms. Deepali Thakkar for Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 9th JUNE, 2022.
PRONOUNCED ON: 10th JUNE, 2022

P.C. :

Heard learned counsel for the applicant, learned
Additional Public Prosecutor for the State and learned counsel
for the complainant. Perused the charge-sheet.

2 Applicant seeks his enlargement on bail in connection
with the Investigation in First Information Report No. 3390 of

2020 registered with Vishrantwadi Police Station, Pune for the offence punishable under Section 377 of the Indian Penal Code, 1860 ('IPC' for short) and Section 3, 4, 5(l)(m), 7, 8, 11(ii) of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' for short).

3 Victim herein was 11 year old, son of the complainant. Complainant is 42 year old divorcee. In 2016, her first marriage was dissolved. A son and daughter were born from first marriage. Applicant and complainant were working in one company. Her friendship and companionship with applicant since, 2016 gradually blossomed. Whereafter since 2018, complainant and the applicant began their live-in relationship. Both were living in the society at Lohgaon at rental flat with two children of the complainant. Over a period of time, their relationship soured. Complainant alleged on 31st July, 2020, applicant abused her under the influence of liquor. Whereafter, applicant allegedly abandoned complainant and started residing

in another flat at, Pathare Vasti, Lohgaon. Over a period of time, their differences were patched up to some extent. Thereafter, Complainant permitted her son (victim) to stay with the applicant on 15th August, 2020 for two days. Later, she sent her son to the applicant on 6th September, 2020. Complainant in a statement under Section 164(5) of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), alleged that after September, 2020, she had noticed, perceptible change in behaviour of son. She, observed, he was averse and hesitant to go to applicant's house and was dejected. Rather, he was avoiding him. Complainant when inquired as to why he was avoiding to meet the applicant, son allegedly told her that he was subjected to penetrative sexual assault by the applicant on the pretext of giving massage to him. She reported the incident of sexual assault to the police. Whereafter crime in question came to be registered on 23rd September, 2020 for the offences stated above.

4 Applicant was arrested on 23rd September, 2020. Investigation is over and the charge-sheet has been filed.

5 In the course of the investigation, the statement of the victim, his sister and the complainant have been recorded under Section 164 of the Cr.P.C. Besides, the statement of the victim has been recorded by the counsellor. Apparently, statements of the victim corroborate, allegations in the complaint.

6 Learned counsel for the applicant submitted that applicant has been falsely implicated in this case by the complainant. She submitted that since 2018 till July, 2020 applicant while in live-in relationship, was taking utmost care, of the complainant and her children, in all respects including their monetary needs. It is submitted victim's narrative of incident to Doctor, who examined him, contradicts the complainant's case. Learned counsel submitted that according to

the complainant, victim was subjected to sexual assault in September, 2020; whereas Examining Doctor reported that *”as last incident of assault might have been occurred two months’ back. Doctor reported, no injuries present. So clinically there is no evidence of sexual assault-cannot be ruled out.”* What is noticeable is that, the last incident of alleged assault probably had taken place two months before, and not in August and/or in September, 2020 as alleged . Be that as it may, assuming that, victim was sexually assaulted by the applicant when they were living together. Even then, there is fallacy, in her complaint. Reason being had, victim been, subjected to sexual assault, while all were living together, he would not have dared or ventured, to stay with the applicant, all alone, on 15th August and 6th September, 2020. For that reason, complainant’s allegations that, since after, visiting applicant’s house, victim was found dejected, seems, to be unlikely, and ‘dubious’. That apart, the applicant has placed on record greetings of victim to the applicant, on father’s day. He wrote

“I know, you are not technically my dad but you fixed the things that I break; come to all the events/meetings; give me money and ----- on the couch. So Happy Father’s Day. Thank you for being there and understanding when Mum could not.”
(emphasis supplied)

The second greeting reads;

“To my dearest Father with love and happiness”

This card is for my dad !!! Not the one who created me but one who is there for me everyday. Happy father’s day to “MY REAL DAD”.

7 These two Greetings by victim in his own colourful handwriting to the applicant, calling him as ‘His Father’ speaks volumes. In fact, the greetings convey his love and affection for applicant profoundly. In fact, greetings that, “Thank you for being there and for understanding when Mum Could not”

signify healthy bond between him and applicant. Having regard to facts of the case, allegations levelled, against the applicant does not appeal to mind. In consideration of these facts, it appears, victim's narrative to the counsellor, prima-facie, was not his 'free' version. Even otherwise, applicant is in custody since September, 2020. He is 26 year old person, having firm roots in the society. Therefore, his presence for the trial can be secured by imposing the conditions. For all these reasons, application is allowed. Hence, the following order;

ORDER

- (i) The applicant in Crime No.3390 of 2020 registered with Vishrantwadi Police Station, Pune City, shall be released on executing PR bond for the sum of Rs.30,000/- with one or more sureties in like sum.
- (ii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on bail.
- (iii) The applicant shall not tamper with the evidence or

attempt to influence or contact the complainant, witnesses or any person concerned with the case

8 The application is accordingly allowed and disposed of.

9 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.)