

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2276 OF 2022

Waris Sayed Ali	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Ms.Tripti Shetty, for the Applicant.

Ms.Rutuja Ambekar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 11th NOVEMBER, 2022.

P.C.

1] The Applicant is charged for the offence punishable under Section 376(2)(f) 376(2)(n), 323, 324, 506 of the Indian Penal Code in connection with CR No.157/2022 registered with Aarey Police Station. He came to be arrested by the concerned Police Station on 11.05.2022.

2] The Applicant is seeking his release on bail on the ground that relationship between him and the prosecutrix, who had lodged report on 21.03.2022, was a mutual relationship. The complainant being his distinct relative and right from the year 2008 till 15.02.2022, she was residing in his flat situated in Goregaon (East), Mumbai.

3] The learned counsel for the Applicant would submit that the accusations are baseless as it is only when her husband came to know

about relationship, she reported to the Police Station accusing that she was forced into sexual relationship.

4] With the able assistance of the learned counsel for the Applicant and the learned APP, I have perused the charge-sheet. The complainant, when she reported the incident, was aged 36 years and she has stated that she got married to one person on 26.01.2022 as per muslim rites and customs and was residing with her husband since last two months. She has specifically stated that she had lost her parents in her childhood and she continued to stay with her grandparents in Solapur. The present Applicant is alleged to be related to her grandmother who used to visit her from time to time. She was taken to Mumbai in the year 2008 and it is alleged that he assaulted her and abused her and from that time he used to inject injections on the pretext that they are vitamin injections and committed forcible sexual intercourse with her, without her consent. In the year 2009, it is alleged that, the Applicant went to London, but he used to return every year.

5] When the charge-sheet is perused, it can be seen that the Applicant possess all the documents in which the address of the Applicant is mentioned, which clearly reveals that she continued to reside with him since the year 2008. The Applicant, who is aged 65 years, used to visit once in a year to India and in the meantime, it was the Prosecutrix who was occupying the house and taking care of the house.

6] There is enormous delay in lodging the FIR which is unexplained. Prima-facie, it appears that after some video was shared with her on the pretext that the Applicant insisted that she should return to him

despite her marriage with other person and continue to maintain similar relationship with him, she lodged the complaint.

7] The prosecutrix being major, though was presumed to be capable of understanding the consequences of her, she continued to reside with the Applicant for a considerable length of time and that is why he Applicant has specifically pleaded that she was staying in his flat and he used to arrange for all her expenses. He has termed the said relationship as live in relationship and long distance relationship as he was catering for all her needs including financial needs.

8] In any case, unexplained delay of 14 years in filing the FIR, make it fatal to the prosecution, but ultimately that cannot be a sole criteria for his acquittal from the charges, but the prosecution ultimately will have to establish that the physical relationship was maintained against her wishes and without her consent. This, however, will be ultimately a matter of trial.

On the investigation being complete and charge sheet being filed, the Applicant need not be further incarcerated, having an overall view of the matter.

9] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the same..

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Waris Sayed Ali shall be released

on bail in connection with C.R.No.157/2022 registered with Aarey Police Station (Sessions Case No.394/2022), on furnishing P.R. bond to the extent of Rs.50,000/- with one or more sureties of the like amount.

(c) The Applicant shall be released on cash bail of Rs.50,000/- for a period of four weeks in lieu of sureties. During the said period the applicant shall arrange for the sureties.

(d) The Applicant shall not travel outside the Country without prior permission of the Sessions Court.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(f) The Applicant shall regularly attend trial, on every date, unless exempted.

(g) Upon release, the Applicant shall furnish his contact number and permanent residential address to the Investigating Officer and shall keep him updated in case of change in the same.

[BHARATI DANGRE, J]