

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3372 OF 2021
(modified as per order dated 24/11/2022)

Faizan Wahid Baig .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. Mateen Shaikh with Muskan Shaikh for the applicant.
Mr.Hrishikesh R. Chavan for respondent no.2.
Mrs.A.A.Takalkar, APP for the State.
PSI Anil Pawar from Ghatkopar police station.

CORAM: BHARATI DANGRE, J.
DATED : 15th NOVEMBER, 2022

P.C:-

1 The applicant came to be arrested on 29/4/2021 when the victim girl lodged a complaint against him accusing him of committing offence punishable u/s.363, 376, 506 of IPC and Sections 4, 8, and 12 of the POCSO Act. Admittedly, the age of the victim girl on the date when the incident took place was 15 years 4 months and she is a minor. At the relevant time, the applicant is little about 21 years.

 With the able assistance of the counsel for the applicant, the learned counsel for the complainant and the learned APP, I have perused the charge-sheet.

2 The Investigating Machinery was set into motion on a complaint filed by the mother of the victim girl who was informed by her daughter about an incident which took place on 6/4/2021, when she had accompanied the applicant to Govandi on the pretext of meeting his aunt and when she was not at home, he forcibly committed sexual intercourse with her against her wishes and consent.

3 The statement of the victim girl came to be recorded on 29/4/2021, where she admitted that she was known to the applicant who was residing in their neighborhood and for last two months, she was close to him and had developed a love relationship. She narrated about the incident dated 6/4/2021 when she accompanied the applicant to Govandi by informing her family members that she was going to a friend's house for attending an online class. When she accompanied the applicant to her aunt's house, he informed her that she was not present at home and they would wait for her to come back. It is then alleged that he committed forcible sexual intercourse with her and also threatened her not to disclose the said incident to anyone and she returned home along with him. However, on 29/4/2021, when her sister caught her chatting on the Whatsapp, she disclosed the incident to her family members. The statement of the victim girl is also recorded u/s.164 of Cr.P.C.

4 During the course of investigation, the statement of the aunt of the applicant to whom, according to the prosecution,

the complainant was forced to visit and where the alleged incident had taken place is recorded. She has stated to the police that on 6/4/2021, she was visited by her sister's son from Ghatkopar and he inquired with her whether she would permit entry for his girlfriend in the house, but she shouted at him. After that, she went to the market by leaving her daughter aged 6 years to the house and when she returned at 5'O clock to find her nephew in the company of the girl, she shewed them away immediately.

5 The medical examination refer to tear at 3'O clock, which apparently, establish that there was physical indulgence. The medical opinion in Column no.25 also refer to a hymenal tear which co-relate with the history narrated by her of sexual violence/assault without her consent by her boy friend.

6 Taking an overall view of the material compiled in the charge-sheet, it appears that the applicant though minor, was capable of understanding the consequences of her act and she voluntarily accompanied the applicant to her aunt's place. Though she is a minor and her consent become immaterial, in a case like this, where she voluntarily joined the company of the applicant, and she had categorically admitted that she was in love with the applicant, whether that she consented for the sexual intercourse or not, is the matter of evidence. Till what point of time, she accompanied the applicant and whether she resisted the actual physical indulgence, when according to her, the applicant forcibly committed sexual intercourse with her against her wishes,

will have to be determined. In any case, the prosecutrix/victim kept quiet till her Whatsapp chat with the applicant was objected to, by the family members and then she narrated the incident which was alleged to have taken place on 6/4/2020. The time gap between these two events is also crucial as it was always open for the prosecutrix to disclose the aunt about the forcible act if it was committed in her house, but she continued to remain silent and disclosed the incident only when an objection was taken for she establishing contact with the applicant.

7 In the aforesaid circumstances and particularly, when the applicant is also a young boy, the possibility of he also smitten by infatuation, cannot be ruled out and though he may take the consequences of the accusations levelled against him, at present, he need not be further incarcerated being arrested on 29/4/2021, when the trial may consume considerable time.

This is however, subject to the stipulation that he shall, in no way establish contact with the prosecutrix and shall move himself along with the family from the area where the prosecutrix is residing and shall not enter in no way make any attempt to establish contact with him, either physically or virtually.

Observations made above are prima facie in nature and limited for the purpose of adjudication of the present application, and shall in no way, bind the Sessions Judge while he

is trying the applicant for the offence with which he is charged.

8 I would like to place on record the appreciation for Advocate Hrishikesh Chavan who has ably assisted this Court on being appointed as a Legal Aid, and the Legal Services Authority shall make over the remuneration to him within a period of four weeks from today.

ORDER

- (a) The Applicant – Raizan Wahid Baig in connection with C.R.No.261/2021 registered with Ghatkopar Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

The applicant shall be released on provisional cash bail of Rs.25,000/- in lieu of sureties for a period of six weeks. During the said period, the applicant shall arrange for the sureties.

- (b) 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 the applicant should not tamper with evidence.

- (c) The applicant shall not establish any contact with the prosecutrix and shall move himself along with the family from the area where the prosecutrix is residing and shall not enter in no way make any attempt to establish contact with him, either physically or virtually.
- (d) The applicant shall attend the Ghatkopar Police station on first Saturday of every trimester between 3.00 p.m to 5.00 p.m. The Applicant shall attend the trial on regular basis.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)