

PMB

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

BAIL APPLICATION NO. 3774 OF 2021

VISHAL HEMANT SAITAVADEKAR ..APPLICANT
VS.
THE SENIOR INSPECTOR POLICE
AND ANR. ..RESPONDENTS

Ms. Ruchita Ghag for applicant.
Mr. Udayan A. Shah for complainant.
Mr. N. B. Patil, APP for State.

**AND
BAIL APPLICATION NO. 3100 OF 2022**

ANKIT RAJESH PANDEY ..APPLICANT
VS.
THE STATE OF MAHARASHTRA
AND ANR. ..RESPONDENTS

Mr. Vikas Tiwari i/b. Mr. Rahul Yadav for applicant.
Mr. N. B. Patil, APP for State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 24, 2022.

P.C. :

BAIL APPLICATION NO. 3774 OF 2021

1. Heard learned counsel for the applicant, learned APP and Mr. Udayan A. Shah, learned counsel for the complainant.

2. The applicant is praying for his release on bail in respect of the offence punishable under Sections 376-D and 506 of the Indian Penal Code, 1860 (hereafter "the IPC" for short) and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) in connection with C.R. No.058 of 2021 dated 25/02/2021 registered with Bhayandar Police Station.

3. The prosecutrix, 17 years of age, lodged the report that she had a love affair with one of the accused Piyush since last one year. The family members were not aware about this. Another accused, a friend of Piyush by name Ankit and his uncle, the applicant herein, are known to her. The complainant on 20/02/2021 at about 6.30 p.m. went to the house of her friend "V" and was returning back home around 9.45 p.m. While on the way, Ankit called the complainant and told her that the mother of Piyush wanted to meet her on the second floor of the building situated near one hotel. She reached around 10.00 p.m. and made a phone call to Ankit and asked about the whereabouts of

Piyush's mother. Piyush's mother was not present there. Ankit told her that Piyush is coming along with her mother. After some time Piyush came and told her that his mother would be joining later. At around 10.15 p.m., the accused Piyush demanded sexual favour from her. On refusing, she was forcibly dragged inside when Piyush committed forcible sexual intercourse on her person. After some time Ankit and the present applicant came in the room. Ankit and Piyush went out of the room and closed the door from outside. The applicant started outraging her modesty. On hearing her shout, Ankit and Piyush came in the bedroom when Ankit and thereafter Vishal had forcible sexual intercourse with her. She was threatened not to disclose the incident to anyone. Thereafter at about 11.00 p.m., Ankit and the applicant left her on the ground floor of the building. The complainant went home. On 24/02/2021 she disclosed about the incident to the mother of her friend. A report was then lodged.

4. Learned counsel for the applicant pointed out that Piyush and the complainant were in a relationship for more

than a year. There is a delay of 5 days in registering the FIR. There are contradictions in the statements of the complainant recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973. Learned counsel submitted that even in the CCTV footage, it could be seen that no attempt was made on the part of the complainant to run away or resist and therefore, this is a case of false implication.

5. I have gone through the statement recorded under Section 164 of the complainant. I do not find any reason to disbelieve the version of the complainant. In fact the CCTV footage *prima facie* supports the case that the complainant is seen along with the three accused at the flat, which supports her version about the presence of the three accused. The medical record also supports the version of there being a sexual assault. Merely because there is some delay in registering the FIR, is no ground to disbelieve the complainant in view of the explanation given by the complainant about being threatened. She did disclose about the incident to one of the witnesses "M", who is supporting

the version of the prosecutrix. The age of the victim is 17 years. She stated to be in a relationship with Piyush. Having regard to the allegations and from the materials as they stand, I see no reason to grant this application. There is no reason for a false implication. The Bail Application is rejected.

BAIL APPLICATION NO.3100 OF 2022

1. For the reasons recorded in Bail Application No.3774 of 2021 even the present application stands rejected.

(M. S. KARNIK, J.)