

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1 OF 2022

Shahid Dadusahab Dodmani	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr. Shailesh Kharat for the applicant.
Mr. Ganesh Bhujbal for Respondent No.2.
Mr. H.J. Dedhia, App for the State.

CORAM : BHARATI DANGRE, J

DATE : 21st OCTOBER, 2022.

P.C.

1] The Applicant is charged as accused no.2 in CR no. 769/2021 registered with Hadapsar Police Station on 22.09.2021. The said CR invoke offences under Section 363, 509, 354A, 354D, 507 read with 34 of the IPC and Section 67 and 67B of the Information and Technology Act and under Section 8 and 12 of the POCSO Act.

2] Three persons were arraigned as accused, the accused being Accused No.2 came to be arrested on 22.09.2021 alongwith other two accused. On completion of investigation charge sheet has been filed and he remained incarcerated.

3] When the material compiled in the charge-sheet is perused, it

can be seen that the investigating machinery was set into motion by the complainant, mother of the victim girl, who reported that on 17.09.2021 she noticed that her minor daughter received messages on her mobile and when she took her mobile and inspected the same, she noticed that the message was received from Accused No.1. When she confronted her daughter, she admitted her friendship with accused No.1 and she also made reference of two other accused persons.

The statement of victim girl is recorded under Section 161 of the Cr.P.C. where she state that accused No.1 was known to her and he introduced his other two friends, i.e. accused Nos.1 and 3 to her. She mentioned about various interactions with the accused persons and by specifically reporting about an incident dated 15.09.2021, she state that she was called by accused No.1 to reach at a particular place and when she refused to meet him, he threatened her and hence she went to meet him as per his directions, to find both of his friends present there. When she demanded answer about her harassment from Accused No.1, he threatened her that he would eliminate himself. After some time, they decided to visit ganpati pandals and though she objected, but she was asked to accompany. The allegations against the present applicant is to the effect that after accused No.1 and 3 left the place, when she was standing there, taking advantage of she being alone, he pulled her towards him, but she immediately pushed him away.

After some time, accused Nos.1 and 3 arrived at the spot and she requested accused No.1 to reach her to her house.

On reaching home at around 4.00 a.m. in the morning she allege that she received objectionable video from the mobile phone of Shahin. It is in the background of this material compiled in the charge-sheet the applicant faces trial, presently being under detention.

4] It is pertinent to note that during the course of investigation, the mobile handsets of all the three accused were seized and video recording and chats were noted. It is informed that mobile phones are sent for forensic analysis. Apart from this, the lenovo tab was also recovered from the victim girl.

When the panchanama prepared on 23.09.2021 is carefully perused, as far as present Applicant is concerned, it is seen that data was retrieved and it was noticed that there are two video recordings and five WhatsApp chats between him and the victim girl. Her name was also shown in him mobile as "Pagal Asania Avi" The data from the tab of the victim girl which was seized, reveal one video recording and some whatsapp chats between she and accused No.1 The panchanama record that contents of all the three mobiles and one tab which include video recording and whatsapp chat have been converted into a compact disk by deriving its hash value.

From the said panchanama, prima-facie- no connect is established between the present Applicant and the victim girl with regard to objectionable video forwarded to her.

5] As far as offence under Section 8 and 12 of the POCSO Act is concerned, it is necessary for the prosecution to establish that the act would fall within the purview of "sexual assault" as defined under Section 7 of the Act and it is very necessary for the prosecution to establish that the touch is with sexual intent.

The Applicant faces accusation at the instance of the victim that he pulled her towards him, but she immediately pushed him away.

Prima facie it cannot be said that the offence would fall within the purview of sexual harassment. Even assuming for a moment that it

would fall within clause (iii) as in absence of any video being shared for pornographic purpose, the said offence would not be attracted. In any case, offence under Section 8 and 12 of the POCSO Act would invite maximum penalty of imprisonment, which may extend to 5 years and fine.

6] In the wake of aforesaid accusations, specifically when the applicant is a young boy aged 22 years and with future staring at him , I do not deem it appropriate to keep him incarcerated further, though he may face trial and take consequences of the charges levelled against him .

7] 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 above order.

Hence, the following order :

O R D E R

- (a) Application is allowed.
- (b) Applicant – Shahid Dadusaheb Dodmani shall be released on bail in connection with C.R.No.769 of 2021 registered at Hadapsar Police Station 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 cash bail of Rs.25,000/- for a period of six weeks in lieu of sureties. During the said period the applicant shall arrange for the sureties.

(c) The applicant shall report to the concerned Police Station on first Monday of alternate month between 5.00 p.m. to 6.00 p.m.

(d) 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.

(e) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]