

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 571 OF 2022

Shyam Gautam More

...Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.Suyash N. Khose, for the Applicant.

Ms.P.N. Dabholkar, APP for the Respondent-State.

Ms.Rui Danawala, for Respondent No.2.

Mr.Sushil Sakpal, Shil Daighar Police Station, Thane City.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th SEPTEMBER 2023

P.C:-

. Learned counsel Ms.Danawala, submitted that, complainant has appointed her to represent her. On behalf of Respondent No.2 she will file Vakaltnama in the Registry during the course of the day. Leave granted.

2. By this Application, Applicant is seeking bail in C.R. No.286 of 2021 registered with Shil Daighar Police Station, Thane, for the offence punishable under Sections 363, 366,

366(a), 376(2)(n), 376(2)(f), 376(2)(i) and 373(3) of the Indian Penal Code ('IPC' for short) and under Sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO').

3. It is prosecution's case that, on 6th September 2021 the Complainant/mother of the victim lodged complaint stating that her minor daughter was kidnapped by unknown person. In investigation Police arrested Applicant along with victim. On 10th October 2021 statement of victim was recorded. In her statement she stated that Applicant is husband of her elder sister. Applicant told her that he likes her. Thereafter, love affair developed between them.

On 5th September 2021, Applicant called her in the room of his friend and made sexual assault on her. When she was coming out of the room, her sister had seen her with Applicant. Therefore, quarrel took place between them. On 6th September 2021, Applicant came to her house and told her that their family members will not allow them for marriage and they have to perform marriage by eloping the house. Then they ran away and

went to Belgaon at Karnataka. There they stayed together. When they were staying their Applicant sexually assaulted her for four times.

4. It is contention of the learned counsel for the Applicant that, there is contradiction in statement under Section 161 and 164 of Cr.P.C. of victim. In the statement before police victim has stated about sexual assault by the Applicant whereas in statement under Section 164 no such reference is made. The learned counsel further submitted that, Complainant has filed Affidavit stating that she has no objection to grant bail to the Applicant. Considering the contradiction in statement of victim, Applicant be released on bail.

5. The learned APP submitted that, at the time of incident victim was below 15 years old. There are allegations against the Applicant that, he sexually assaulted the victim. The Medical Report supports the statement of victim. Mere contradiction in the statement of victim cannot be a ground to grant bail to the Applicant, if the Applicant is released on bail he

may threaten the victim or he may abscond. Hence requested to reject the Application.

6. Learned counsel for Respondent No.2 submit that, she has no objection to allow the Application.

7. I have heard all the learned counsel. Perused FIR and Charge-sheet.

8. In statement before the police victim has stated about sexual assault on her, whereas in statement under Section 164 of Cr.P.C., before the Magistrate victim has not referred about sexual assault by the Applicant. There is contradiction in both statements. Applicant is behind bar more than two years. Considering above facts his further detention is not required.

9. In view of above, I pass following order.

ORDER

(i) The Applicant be released on bail in C.R. No.286 of 2021 registered with Shil Daighar Police Station, Thane, on furnishing PR bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(ii) After his release from jail the Applicant shall attend the Shil Daighar Police Station, Thane, once in a month i.e. on every 1st Monday of the month between 11.00 a.m. to 3.00 p.m. till the conclusion of the trial.

(iii) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(iv) Application is allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)