

SA Pathan

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

BAIL APPLICATION NO.503 OF 2023

Jasaram Bhiyaram Sutar	... Applicant
V/s.	
State of Maharashtra	... Respondent

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2023.08.08
10:56:47 +0530

Mr. Rajesh More, for the applicant.

Ms. Komal Sinha, for Respondent No.2 (appointed as legal-aid)

Mr. Amit A Palkar, APP for the respondent/ State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 8, 2023.

P.C.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.72 of 2021 registered with Bhore police station for the offences punishable under Sections 363, 366, 342, 370, 370A, 376, 376(2)(j)(n), 323, 506, 507 r/w 34 of the Indian Penal Code, 1960, under Sections 4, 8, 10 of Protection of Children from Sexual Offences Act and Section 4, 5, 6 of Prevention of Immoral Trafficking Act.

2. The case of prosecution in short is that on 20 April 2021, the victim aged 16 years has lodged report that her mother was working in hotel at Ambawade, Taluka Bhore, District Pune in the year 2018 and the victim along with her younger sister and

brother were residing at Ambawade in one chawl on rent. On ground floor in the same chawl, Komal More i.e. accused No.1 and Sunil Kore i.e. accused No.10 were residing with their daughter Tanushka Kore on second floor in one room. It is alleged that the victim got acquainted with Komal More i.e. accused No.1 and friend of accused No.1 Sapna. Accused No.1 told the victim that she should go with accused No.1 Komal at Pune and she will complete her education. Accused No.1 asked the victim to come with her and told her that her parents were not having love towards her and gave thumbs up bottle to drink. Thereafter, the victim smelled liquor and she refused to drink the said cold drink. Accused No.1 forced to drink the said cold drink and gave her Cigarette for smoking on that day and he told the her against her mother. Thereafter, victim went along with accused No.1 to Pune at Gokulnagar, Katraj, Pune, where she took one flat on rent.

3. On second day accused No.1 Komal More took the victim to the house of her friend Reshma i.e. accused No.2 and introduced victim to Reshma. Thereafter, accused No.1, Reshma's husband and son were taken the victim in one lodge and kept her in one room after some time on unknown person came there and he beat her and forcibly had sexual relation with her. At that time accused Nos.1 and 2 were present out side of the said room. The victim came outside the said room and she was crying. It is further alleged that, at that time the said unknown person gave money to accused Nos.1 and 2. Both the accused took the victim to the house of the accused No.2 and then went to the house of accused No.1 by auto rickshaw. Thereafter, the said rickshaw driver also

forcibly had taken the victim in the bedroom and committed forcibly sexual intercourse with her and he gave money to accused No.1. The victim requested to leave her, but accused No.1 threatened the victim and beat her. Thereafter, accused No.1 went to Karnawad, Bhore to bring her daughter and she looked the victim inside the said flat. After five days one unknown aged person came in the flat and he took victim in the bedroom and established physical relations with the victim. The said unknown person also gave money to accused No.1. The victim heard talks of accused No.1 saying that they have some girls for prostitution business. After 4 to 5 days accused No.1 took the victim to the flat of said aged person at Hadapsar to whom accused No.1 called 'Shethji' who established forcibly sexual relation with the victim 5 to 6 times and every time he had given money to accused No.1. Thereafter, the victim came to know that the accused No.1 and 2 absconded accused No.3 Mahesh Gaikwad and Mami were earning money from the customers and directing to victim to keep physical relations with them. Thus, the victim reported to the respondent police station.

4. According to prosecution on 12 December 2022, when the victim was going to the hospital at Vadgaon Budruk, she recollected the place. She recollected that the building where co-accused used to take her for maintaining physical relations with "Shethji" is the same place. Therefore, she went at that place and served the room. She found out the room and told her mother about the room. She went to Bhore police station and with the help of Sinhgad police apprehended the applicant. The applicant was,

therefore, arrested on 22 December 2022.

5. The applicant filed application under Section 439 of Cr.P.C. seeking bail before learned Sessions Judge, which came to be rejected by order dated 21 January 2023.

6. Learned Advocate for the applicant submitted that there is serious dispute about identity of the applicant, the place where victim was taken at “Shethji” was mentioned at Hadapsar. However, in the supplementary statement victim has stated that said building is at Vadgaon Budruk. The distance between Vadgaon Budruk and Hadapsar is around 17 km. The co-accused named in the supplementary statement statement has been released on bail by this Court in Criminal Bail Application No.2985 of 2021. The applicant, therefore, deserves to be released on bail.

7. Per contra, learned APP submitted that the offence alleged are serious in nature. This Court in Bail Application No.3697 of 2021 has rejected bail of co-accused Reshma Gaikwad and Ravi Yadav. The victim has identified the applicant and therefore, the application deserves to be rejected.

8. I have considered the material on record, *prima facie*, it appears that the victim in her first information report lodged on 9 April 2021 stated that Komal More used to take her old aged person residing in the flat at Hadapsar area. He used to do construction work and every time there was physical relations between the victim and the applicant. He used to pay Komal More. However, in the supplementary statement dated 22 December 2022, the victim stated the building at Vadgaon Budruk to be a

place where “Shethji” used to keep physical relations with her. Therefore, the discrepancy of place raises serious dispute about identity of the applicant. The role attributed to Reshma Gaikwad and Ravi More are totally different. In that case, there was no dispute of identity. The prosecution needs to establish identity of the applicant during trial. It needs to be noted that the alleged incident of forcible sexual intercourse with the victim had took place in the year 2018. The first information report was lodged on 9 April 2021. The supplementary statement based on identity of applicant was recorded on 22 December 2022. The applicant was arrested on 22 December 2022. Considering the stage of trial, it is unlikely that the trial will be over in near future.

9. Moreover, the co-accused Sunil Kore has been released on bail, who was named in the supplementary statement, by this Court in Criminal Bail Application No.2985 of 2021. The applicant has, therefore, made out a case for his release under Section 439 of the Code of Criminal Procedure, 1973. Hence, following order is passed:

(a) The application is allowed.

(b) The applicant Jasaram Bhiyaram Sutar be released on bail in connection with C.R. No.72 of 2021 registered with Bhor police station for the offences punishable under Sections 363, 366, 342, 370, 370A, 376, 376(2)(j)(n), 323, 506, 507 r/w 34 of the Indian Penal Code, 1960, under Sections 4, 8, 10 of Protection of Children from Sexual Offences Act and Section 4, 5, 6 of Prevention of Immoral

Trafficking Act, on furnishing PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(c) The applicant shall mark his attendance with the concern police station on first Saturday of each month between between 11:00 am to 2:00 pm till conclusion of trial.

(d) The applicant shall remain present before the trial Court on each date unless specifically exempted by the Trial Court.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court.

(f) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.

(g) The applicant shall not tamper with the evidence of the prosecution and shall not influence the witnesses.

10. The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)