



PMB

48-ba-642-23.odt

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

BAIL APPLICATION NO. 642 OF 2023

Avinash Subhash Kamble ..Applicant

VS.

The State of Maharashtra ..Respondent

Adv. Pankaj D. Purway a.w Adv. Akshay Bhalerao for the
Applicant.

Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 22, 2023

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for bail filed by the applicant in
connection with C.R. No.323 of 2022 is registered with
Powai Police Station, Mumbai for the offence punishable
under Section 376 of the Indian Penal Code.

3. The FIR was lodged on 08.04.2022. The complainant
was in relationship with the friend of the applicant. The
complainant broke up with him. After the break up, the
complainant started conversing with the applicant.
According to the complainant, the applicant tried to patch

up her relationship with her friend with whom she had broken of. On 06.04.2022 the applicant told the complainant to come at Greenwood Lodge at Powai where it is alleged that he committed the act which is an offence under the aforesaid provisions.

4. Learned counsel for the applicant submitted that though the incident is dated 06.04.2022, the FIR was lodged on 08.04.2022 and hence there is a delay in lodging the FIR. I am not impressed with the submission of learned counsel for the applicant that delay by itself is a factor which will entitle the applicant to be enlarged on bail.

5. On a perusal of the statement of the victim, the possibility of physical relationship being consensual cannot be ruled out. Further, it is the victim's friend in whom she confided, informed the incident to the victim's earlier friend with whom she had broken up and it is as per his advice that the FIR came to be filed by the victim. I have also perused the whats-app chats between the applicant and the victim which makes me form a prima facie opinion that the act complained may be consensual.

6. Learned APP vehemently opposed the application. According to her, the accusations and the materials clearly indicate that the accused took disadvantage of the break up and thereby committed an act which is serious in nature.

7. The applicant was arrested on 08.04.2022. He is in custody for more than 1 year and 4 months. The investigation is complete. The chargesheet has been filed. The trial is likely to take long time to conclude. There are no criminal antecedents reported against the applicant. The applicant is 22 years of age. The applicant is a student. The applicant can be released on bail. Hence, the following order :-

ORDER

- (i) The application is allowed.
- (ii) The applicant – Avinash Subhash Kamble in connection with C.R. No.323 of 2022 registered with Powai Police Station, Mumbai shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant to report to the Powai Police Station, Mumbai once every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(iv) 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. The applicant should not tamper with evidence.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer of the concerned Police Station and shall keep him updated, if there is any change.

(vi) The applicant shall not enter the jurisdiction of Khar Police Station and shall not contact the victim.

8. The application is disposed of.

9. I may hasten to add that the observations made are purely for the consideration of the bail application and shall not influence the trial Court.

(M. S. KARNIK, J.)