



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

BAIL APPLICATION NO. 1050 OF 2023

JAMSHED ISRAEL SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Mr. Sushant Jadhwar, for the Applicant.

Mr. N. B. Patil, APP for the State.

Ms. Misbaah Solkar a/w Faira Gawandi, for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 6, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. This is an application for bail in respect of the offence punishable under sections 376, 377, 506 of the Indian Penal Code, 1860 registered on 18/08/2022 vide C.R. No.365 of 2022 with Central police station, District - Thane. The applicant was arrested on 18/08/2022.
3. The applicant is married and so is the prosecutrix. It is the contention of the prosecutrix that the applicant had visited her home sometime in the year 2021 to deliver chicken lollipop. The chicken lollipop was laced with

stupefying substance. The prosecutrix felt giddy and realised that the applicant committed an act which is an offence under the aforesaid sections. Thereafter the applicant threatened her that he has taken some unpleasant pictures of her in his mobile, taking advantage of this fact, he went on to continue this act thereafter from time to time. The applicant also demanded money from the prosecutrix. The applicant threatened her that if she refused to fulfill his demand of money, he will make viral the unpleasant pictures of the prosecutrix. The prosecutrix had to satisfy his demand of money as well.

4. Learned counsel for the applicant submitted that relationship between the applicant and the prosecutrix is consensual in nature. It is submitted that in the medico-legal examination report, the prosecutrix has stated that the applicant offered her some sweet which was laced with stupefying substance and not chicken lollipop as stated by her in the FIR.

5. Learned APP and learned counsel for the prosecutrix opposed the application. It is submitted by learned counsel for the prosecutrix that it was under threat of making

unpleasant pictures of the prosecutrix viral that the prosecutrix was forced to succumb to the applicant's threats against her wish. It is further submitted that the applicant had taken money from the prosecutrix time and again and when it became unbearable for her, she gathered courage and reported the incident.

6. Prima facie, it appears that the possibility of a consensual relationship cannot be ruled out. In the facts and circumstances of the present case, I am inclined to enlarge the applicant on bail considering that the applicant is in custody from 18/08/2022 for a period of more than 1 year and 2 months with no possibility of the trial commencing and concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. In my opinion, the applicant does not appear to be a flight risk.

7. My observations are prima facie in nature and trial Court may proceed with the trial on its own merits in accordance with law without being influenced by any observations made by me. It is one of the contention of the

learned counsel for prosecutrix that the applicant may threaten her and tamper with the evidence if he is enlarged on bail. Learned counsel for the applicant on instructions submitted that the applicant is willing to reside outside Thane District till the trial concludes. This will allay the apprehension of the respondent no.2 as any further incarceration will only be by way of a pre-trial punishment. I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Jamshed Israel Shaikh in connection with C.R. No. 365 of 2022 registered with Central police station, District Thane shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.
- (d) The applicant shall attend the investigating officer of Central police station, District-Thane once in a month every first Monday of the month between 11.00 a.m. and 1.00

p.m.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(g) Except for attending the trial and for the purpose of reporting to the investigating officer, the applicant shall not enter the jurisdiction of Thane District after being released on bail, till the trial concludes or subject to any modification of the condition by the trial Court at a later stage.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

8. The application is disposed of.

(M. S. KARNIK, J.)