

Dinesh Ranchod Patel	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

CORAM : G.A. SANAP, J

PC:

1. The accused has made this application for bail in C.R No. 226/2021 registered with Sahar Police Station for the offences punishable under sections 354, 506, 376 (2) (f) (n), 377 of the Indian Penal Code, 1860 read with sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the IPC” and “the POCSO Act”, for the sake of brevity).

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love affair of the informant with Shubham Kothari and therefore, he gave understanding to the informant. Learned advocate took me through the report and particularly the history of assault narrated by the informant at the time of medical examination and pointed out that while narrating the history of assault, she has stated that father had told her to break up relationship with a boyfriend. She has further stated that they together decided to file a case against her father. Learned advocate submitted that even if the facts stated in the report are taken at their face value would indicate that report was an attempt to pressurize her father to succumb to her wish and desire to maintain relationship with Shubham Kothari. Learned advocate further submitted that accused and his family members are residing in a Chawl tenement consists of ground and one mezzanine floor. Learned advocate submitted that the period stated by the informant of the alleged sexual assault by a father was during the Covid-19 period when all the family members were in house. Learned advocate submitted that it is totally un-believable. Learned advocate submitted that therefore, in the teeth of the evidence, further incarceration may not be warranted. It is submitted that the accused is ready to abide by the conditions that may be imposed by the Court.

3. Learned APP submitted that the crime committed by the accused is a serious crime by applying any standard. Learned APP further submitted that the accused is in a dominant position and therefore in the event of bail he would threaten the informant and witnesses. Learned APP submitted that there is ample evidence to *prima facie* establish the complicity of the accused in the crime. Learned APP submitted that accused is likely to pressurize and / or threaten the victim in case he is released on bail.

4. In order to appreciate rival submissions, I have gone through the record and proceedings. Undisputed facts relevant to the decision of this application may be stated at the outset. The informant has love affair with one Shubham Kothari. The accused came to know about it. The history of the assault narrated by the accused to the medical officer would show that the accused and other family members had warned the informant to break up her ties with Shubham Kothari. She did not do that. In the report reference has been made to her maternal uncle, who according to her was about to eliminate Shubham Kothari. The other family members of the accused and the victim, who's statements have been recorded have stated about the love affair of the victim and Shubham Kothari. But they have

categorically stated that they have not seen any sexual assault committed by the accused with informant. The premises where they are residing are situated in a chawl. It consists of ground + mezzanine floor. The incident in question according to the informant occurred between April 2019 to April 2020. It is undisputed that this was a peak period of Covid-19 pandemic. The informant did not disclose the atrocities committed by her own father with her mother. Mother in a statement recorded by police has stated that she has not seen any such atrocity or sexual abuse of the informant at the hand of the father. I am conscious of the facts that while deciding the bail application, the merits of the matter cannot be gone into. The available evidence cannot be tested on the touch stone of credibility. However, bearing mind the available evidence, undisputed facts and attending circumstances, the Court has to form an opinion to decide the bail application. The Court has to exercise the discretion appropriately while deciding bail application if the material on record creates doubt about the case of prosecution. The discretion has to be exercised keeping in mind the facts and circumstances in totality. In my view, in this case, the prominent circumstance in favour of the accused at this stage is that the informant had love affair with Shubhan Kothari. The

father did not like it. The father insisted her to break up her ties with Shubham Kothari. She did not do that. While narrating the history of assault to the medical officer she has stated that when her father told her to break up her ties with Shubham Kothari, they decided to lodge a false report.

5. In my view, considering the facts in totality and without expressing any opinion as to the merits of the matter, I am of the view that this is a fit case to exercise the discretion in favour of the accused and enlarge him on bail. The apprehension placed on record by the learned APP that considering the relationship the possibility of tampering of the evidence and or threatening the victim cannot be ruled out, can be taken care of by imposing appropriate conditions. In my view on the basis of this appreciation the bail cannot be denied. Accordingly, the application is allowed on the following terms and conditions:-

ORDER

- (i) The criminal application is allowed.
- (ii) Applicant/accused – Dinesh Ranchod Patel be released on bail C.R No. 226/2021 registered with Sahar Police Station for the offences punishable under sections

354, 506, 376 (2) (f) (n), 377 of the Indian Penal Code, 1860 read with sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the IPC” and “the POCSO Act”, for the sake of brevity) on his furnishing PR. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with solvent surety in the like amount.

(iii) The applicant shall not in any way tamper with the prosecution evidence.

(iv) The applicant shall not pressurize or threaten the prosecution witnesses and victim.

v) The accused shall not go to his house till completion of the trial as stated by him in his affidavit (page 130, Exhibit-7). He shall stay at Dadar.

6. The application is allowed and disposed of in the aforestated terms.

(G.A. SANAP, J)