



Diksha Rane

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

BAIL APPLICATION NO.2548/2023

SHAILESH INDRABALI DUBEY

..APPLICANT

VS.

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Kuldeep Patil i/b. Adv. Saili Dhuru for the applicant.
Ms. Veera Shinde, APP for the State.
Adv. Trupti Khamkar for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 3, 2023.

P.C. :

- 1.** Leave to amend so as to remove page nos. 151 to 161 which are annexed to the application and from the copies of learned APP as well as learned counsel for the respondent no.2. Amendment to be carried out forthwith.
- 2.** Heard learned counsel for the applicant, learned APP for the State and learned counsel for the respondent no.2.
- 3.** This is an application for bail in respect of the offence punishable under Sections 376, 509, 507 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with 4, 19, 21 of the Protection of Children from Sexual Offences Act,

2012 (hereafter 'the POCSO Act' for short) read with Sections 65(d), 67 (c)(d) of the Information Technology Act, registered on 18/12/2022 vide C.R. No.1324/2022 with Waliv Police Station, District Palghar.

4. The victim is the sister-in-law of the applicant. It is the allegation of the victim that when she was 16 years of age and she was residing with the applicant and his wife who is the sister of the victim, the applicant had forcible sexual relations with her. Almost after eight years the complaint was lodged by the victim post her marriage about the incident that had taken place prior to her marriage which is the offence under the aforesaid sections.

5. Learned counsel for the applicant submitted that the First Information Report (FIR) is filed belatedly. He further submitted that there were consensual relations between the parties and after the applicant's wife, who is also the accused, came to know about the affair that the false complaint is lodged. Learned counsel for the applicant submitted that relationship continued even post marriage of the victim and therefore, this is a case of a consensual relationship.

6. Learned APP as well as learned counsel for the respondent no.2 opposed the application.

7. It is submitted that the offence is serious and in a case of such a nature delay in filing the FIR cannot be a factor which can be considered in favour of the applicant. It is submitted that at the relevant time, the victim was minor and hence, her consent is immaterial.

8. The applicant was arrested on 23/12/2022 and is now in custody for more than ten months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. The victim is residing at Vasai whereas the applicant is the resident of Badlapur.

9. In the facts and circumstances of the present case, any further incarceration will only be by way of a pre-trial punishment. The applicant will face the consequences post trial if the charges against him are proved. The applicant can be enlarged on bail by imposing conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Shailesh Indrabali Dubey in connection with C.R. No.1324/2022 registered with Waliv Police Station, District Palghar, 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 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.
- (e) The applicant shall not make any attempt to contact the victim.
- (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, the applicant shall not enter the Palghar District after being released on bail, till the trial concludes.

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

(i) The applicant shall surrender his passport, if any, to the investigating officer.

10. The application is disposed of.

11. I express my gratitude for the able assistance rendered by the advocate Ms. Trupti Khamkar representing the respondent no.2.

(M. S. KARNIK, J.)