

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

BAIL APPLICATION NO.3738 OF 2022

Mohammad Waseem Yunus Hashmi ..Applicant

VS.

The State of Maharashtra ..Respondent

Adv. Sana Raees Khan a/w Adv. Aniket C. Pardesi for the Applicant.

Mr. S. V. Gavand, APP for the State.

PSI-B. D. Chavan, Sakinaka Police Station is present.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 1, 2023

P.C. :

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

2. This is an application for bail by the applicant-Mohammad Waseem Yunus Hashmi in connection with C.R. No.147 of 2021 dated 19/02/2021 registered with Sakinaka Police Station for the offence punishable under Sections 376-D, 384, 406, 506(ii) read with Section 34 of the Indian Penal Code, 1860.

3. I do not propose to burden this order with detailed facts. By an order dated 19/01/2023 the co-accused Nos.2

and 3 were released on bail. The relevant portion of the order reads thus :-

"2. These applications are filed for bail in respect of the offence punishable under Sections 376-D, 384, 406, 506(ii) read with 34 of the Indian Penal Code (hereafter 'IPC' for short), registered vide First Information Report (FIR) No. 147/2021 with Sakinaka Police Station.

3. The prosecutrix is 28 years of age. The date of the incident is alleged to be January 17, 2020. The FIR is lodged on February 19, 2021. In all there are three accused. It is alleged that the accused no.1 gained the trust of the prosecutrix. On the date of the incident i.e. January 17, 2020, it is alleged by the prosecutrix that she was drugged and rape was committed upon her person by the accused no.1 including the present applicants. It is further stated in the FIR that the accused no.1 forced the prosecutrix to marry him. It is alleged that the husband of the prosecutrix was addicted to liquor. It is the applicant-Mohd. Raj Fajlerab Qureshi (original accused no.2) who had introduced the prosecutrix to the accused no.1. It is further alleged that from time to time the accused no.1 demanded money from the prosecutrix which she paid as she was threatened that the accused no.1 will make her obscene videos viral. The FIR is lodged after delay of almost one year.

4. The present applicants i.e. the original accused nos.2 and 3 were arrested on March 22, 2021 and March 24, 2021 respectively. They are in custody for a period of almost one year and ten months. A reading of the FIR coupled with the delay in lodging the FIR reveals that the possibility of the consensual relationship between accused no.1 and the prosecutrix cannot be ruled out. This is my prima facie opinion.

5. So far as the examination report of the mobile seized is concerned, there is nothing incriminating against the present applicants. There are no criminal antecedents reported against the applicants. The investigation is complete. The charge-sheet has been filed. The trial is likely to take a long time to conclude."

4. So far as the present applicant is concerned, prima facie it appears that the applicant was in consensual relationship with the prosecutrix. Though, it is alleged that the applicant had made some obscene videos of the prosecutrix, the FSL reports do not reveal anything incriminating against the present applicant. The applicant is therefore granted bail.

5. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) Applicant-Mohammad Waseem Yunus Hashmi shall be released on bail in connection with C.R. No.147 of 2021 registered with Sakinaka Police Station, 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 4 weeks in lieu of surety.
- (d) The applicant shall report to the Investigating Officer of the concerned police station once in a month on 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) The applicant shall reside outside the jurisdiction of the Sakinaka Police Station. He shall not enter the area except for the purpose of reporting to the Investigating Officer.

(h) The applicant shall not make any attempt to threaten the prosecutrix or establish any contact with her.

6. The Bail Application is disposed of.

(M. S. KARNIK, J.)