

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

BAIL APPLICATION NO. 3061 OF 2022

Mohammed Imtiyaz Khan	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Ms. Misbaah Solkar a/w. Ms. Faiza Gawandi and Ms. Lavanya
Salve for the Applicant.

Ms. P.N. Dabholkar, APP for the State.

Ms. Gayatri Takalkar, legal aid advocate appointed for R.No.2.

CORAM : G.A. SANAP, J.

DATED : 05th DECEMBER, 2023.

P. C. :-

1. The Applicant has made this application for bail in connection with C.R.No.832/2022 registered with Dharavi Police Station, Mumbai for the offences punishable under sections 376, 376(2)(n), 376(2)(l), 376DA, 376-D, 323, 504, 506 r/w. 34 of the Indian Penal Code, under Sections 6, 10, 12 and 14 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and under Sections 67(A) and 67(B) of the Information Technology Act.

2. The learned advocate for the Applicant-accused submits that there was a love affair between the accused and the victim and therefore the case of the prosecution of subjecting the victim to forceful

sexual assault cannot be believed. The learned advocate for the accused submitted that the statements of the witnesses and of the victim are self-contradictory. The learned advocate for the accused further submitted that the victim and the accused were in relationship for 02 years and at the instance of the relatives, this false report has been lodged. The learned advocate for the accused further submitted that the Chemical Analysis report with regard to the obscene videos is not credible. The learned advocate for the accused submitted that the final conclusion in CA report support the contention of the Applicant. The learned advocate for the Applicant submitted that the Applicant/accused is behind bars for 1½ years. It is submitted that the charge sheet has been filed and therefore for the purpose of interrogation, his detention is not necessary. It is further submitted that the reliance cannot be placed on medical examination report in as much as the examination was conducted after a month and half after the alleged sexual assault. The learned advocate for the Applicant/accused submitted that the accused is a student and his career because of this crime is at stake. The learned advocate for the Applicant submitted that the Applicant/accused is ready to abide by the conditions that may be imposed by this Court.

3. The learned APP submitted that considering the serious nature of the crime repeatedly committed by the accused, he does not deserve bail. Learned APP submitted that the victim was subjected to sexual assault by blackmailing her on the basis of the obscene videos and photographs of the victim taken by the accused. The learned APP submitted that the CA report categorically states that the obscene videos were found in 'Article 1' which is a mobile phone of the accused. The learned APP submitted that the accused is in a dominant position. Therefore, possibility of tampering with the prosecution evidence and threatening the victim and other witnesses, cannot be ruled out. The learned APP submitted that on the date of the incident, the victim was minor and therefore the defence of consensual sexual act is not available to the accused. The learned advocate for the Respondent No.2 – complainant has adopted the submissions made by the learned APP.

4. I have perused the record and proceedings.

5. It is seen on perusal of the record that the younger brother of the accused who is a juvenile, has also been chargesheeted. The CA report prima facie indicate that the obscene videos and photographs of the

victim were found in the mobile phone of the accused which is marked as 'Article 1'. As far as the concluding part of the report is concerned, the same will have to be verified at the stage of evidence. It is seen that at this stage, there is evidence to substantiate the contention of the victim that her obscene videos and photographs were taken and with the help of these videos and photographs, she was blackmailed and subjected to sexual assault. It is to be noted that in case of love affair, the accused should not have taken the obscene videos and photographs. The younger brother of the accused, as can be seen from the case of the prosecution, was instrumental in shooting the obscene videos and photographs. The victim as can be seen from the record, was minor as on the date of the commission of the crime. Therefore, the defence of love affair and consensual act is not available to the accused under law.

6. It is to be noted that at the stage of bail, in the absence of such obscene videos and photographs, the Court could have taken a lenient view. However, the accused has compounded his problems by his serious overt-acts. The accused, as on the date of the offence, was major. The victim in her report has stated that she was forcibly subjected to sexual assault. There is evidence on record to establish

the complicity of the accused in the crime. At this stage, the merits of the matter cannot be gone into. Similarly, the evidence cannot be subjected to the test of credibility. Prima facie, perusal of the material on record indicate that the crime committed by the accused by applying any standards, is serious in nature. The accused is in a dominant position. The apprehension put forth by the learned APP is therefore well founded. As far as the contradictory statements are concerned, the same cannot be looked into at this stage and meet the test of credibility to release the Applicant/accused on bail. I do not see any substance in the application. Hence, the Bail Application is rejected.

PREETI
HEERO
JAYANI

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(G.A. SANAP, J.)