

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3196 OF 2022

Firoz Dawood Bagdadi ...Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Ms.Anjali Patil, for the Applicant.

Mr.A.A. Palkar, APP for the Respondent-State.

Mr.Khan Sherli Shakhibgul, for the Respondent No.2.

Mr.H.T. Kedari, PSI, RCF Police Station.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th OCTOBER 2023

P.C:-

. By this Application, Applicant is seeking bail in Crime No.204 of 2019 registered with R.C.F. Police Station, Mumbai, for the offence punishable under Sections 376(2)(I)(N) and 506 of the Indian Penal Code ('IPC' for short) read with Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

2. It is prosecution's case that, there was friendship between Applicant and victim, they were facebook friends. One

day Applicant came to house of the victim and sexually assaulted her. When he was going out of her house, mother of victim came, thereafter, complaint was lodged against the Applicant.

3. It is contention of the learned counsel for the Applicant that, statement of the victim under Section 161 of Criminal Procedure Code ('Cr.P.C.' for short) was recorded in July 2019 and in the said statement she has stated that there was no sexual assault by Applicant on her. Thereafter, after five months her statement under Section 164 of Cr.P.C. was recorded and in her statement she has stated that Applicant had been to her house and he sexually assaulted her.

4. The learned counsel further submitted that, victim refused to undergo medical examination, whether Applicant had committed sexual intercourse with victim or not is not confirmed, as victim refused to undergo for medical examination. In first statement before the police victim has stated that there was no sexual assault by the Applicant where as after five months in her statement she has stated about sexual assault by the Applicant. Applicant has been falsely implicated in this case. Investigation is

completed and charge-sheet has been filed. Hence, requested to allow the Application.

5. The learned counsel for Respondent No.2 submitted that, allegations against the Applicant are that, he sexually assaulted the victim. Mere refusal to undergo for medical examination can't be a ground to give bail to the Applicant. Applicant had threatened the victim and prosecution witnesses. If he released on bail, he may threaten the victim and prosecution witnesses. The learned counsel for Respondent No.2 further submitted that, charge has been framed against the Applicant. There are few witnesses. Hence, requested directions be given to the Trial Court to expedite the trial.

6. The learned counsel for Respondent No.2 further submitted that, the statement of mother of the victim is recorded on the same day. Where she has stated that Applicant had sexually assaulted the victim. There is *prima facie* case against the Applicant. Hence, requested to reject the Application.

7. He relied on decision of Hon'ble Apex Court in the case of *Ashok Debbaram alias Achak Debbaram V/s. State of Tripura*¹ and *Bhagawan Singh V/s. Dilip Kumar @ Deepu @ Deepak & Anr.*².

¹ (2014) 4 SCC 747

² Special Leave Petition (Crl.) No.6199 of 2023 decided on 23rd August 2023

8. The learned APP reiterates the submissions of the learned counsel for Respondent No.2.

9. I have heard both learned counsel. Perused FIR and charge-sheet.

10. The mother of the victim has lodged complaint against the Applicant on 21st July 2019, stating that, on 20th July 2019 when she came home after work, she asked victim about why she is not giving attention in study at that time victim told her that Applicant is her friend and he had been to their house when no one was in home and on the pretext of marriage he sexually assaulted her. On 28th July, 2019 the statement of victim was recorded by police. In the said statement she has stated that Applicant had come to meet her at home, but she has not stated that Applicant sexually assaulted her. Thereafter, on 13th December 2019 victim's statement under section 164 of Cr.P.C. was recorded and in the said statement she has stated that in July 2019 Applicant had come to her home for one time and she had sexual relation with Applicant. It appears from record that, victim refused to undergo for medical examination. So it is not clear that if victim was sexually assaulted or not by the Applicant. As initially victim has not stated that

Applicant had sexually assaulted her. After five months she has narrated the incident. Applicant is behind bar more than one year. Investigation is completed and charge-sheet has been filed. Considering above facts, further detention of Applicant is not required.

11. I have gone through the case laws cited by the learned Counsel for Respondent No.2. The facts of cited case and case at hand are different hence, not applicable. In view of above, I pass following order.

ORDER

(i) The Applicant be released on bail in Crime No.204 of 2019 registered with R.C.F. Police Station, Mumbai, on furnishing PR bond of Rs.25,000/- with one or two sureties in the like amount.

(ii) After his release from jail the Applicant shall attend the R.C.F. Police Station, Mumbai once in a month i.e. on every 1st Monday of the month between 11.00 a.m. to 3.00 p.m. till framing of charge.

(iii) The Applicant shall not enter the area of Chembur and Govandi where the victim and witnesses stays, till conclusion of the trial.

(iv) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(v) The Trial Court shall decide the case on its own merits and in accordance with law, uninfluenced by the observations made in this order.

(v) Application is allowed in the aforesaid terms.

12. At the request of the learned counsel for Respondent No.2, operation of this order is stayed for four weeks after uploading.

(SHIVKUMAR DIGE, J.)