

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

BAIL APPLICATION NO.3660 OF 2022

Abubakar Aurangjeb Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Khalid Azmi for the Applicant.

Mr. H.J. Dedhia for the Respondent-State.

CORAM: G.A. SANAP, J.

DATE : 20th DECEMBER, 2023.

P.C.:-

1. The accused has made this application for bail in Crime No.1048 of 2021 registered at Kasturba Marg Police Station, Borivali, Mumbai, for the offences punishable under Sections 376(2)(n), 354-A, 354-D and 376 of the Indian Penal Code, 1860 and Section 67(A) of the Information Technology Act, 2000.

2. The learned Advocate for the accused submitted that for more than two years the accused has been behind bars. There is no progress in the trial. Learned Advocate submitted that he has been falsely implicated in this case. Learned Advocate submitted that the

MEGHA
SHREEDHAR
PARAB

Digitally signed by
MEGHA
SHREEDHAR PARAB
Date: 2023.12.22
16:23:30 +0530

victim is major and the case of the prosecution that she was subjected to sexual assault against her consent, is totally unbelievable. Learned Advocate pointed out that till date the report of the analysis of the mobile data of accused is not received. Learned Advocate pointed out that mobile phone of the victim and her relatives have not been seized and sent for analysis. Learned Advocate submitted that in the teeth of the shaky evidence further incarceration is neither necessary nor warranted. Learned Advocate submitted that the accused is ready to abide by the conditions that may be imposed by the Court.

3. Learned APP submitted that despite four reminders to FSL, Kalina, analysis of the data of the mobile has not been done. Learned APP submitted that accused had taken nude photographs of the victim while she was taking bath and on the basis of those photographs, he pressurised the victim to submit to his demands of sexual favour. The learned APP submitted that the victim was threatened to make the photographs viral and under these threats the victim was compelled to prepare her nude videos. Learned APP submitted that the accused pressurised the victim to forward her

videos to him. Learned APP submitted that in order to compel the victim to have sexual relationship with him, the video were circulated to her relatives. Learned APP submitted that considering the serious nature of the crime, the accused cannot be released on bail. It is submitted that the possibility of tampering of prosecution evidence by extending threats to the witnesses cannot be ruled out.

4. It is to be noted that the accused was arrested on 28/09/2021. The mobile phone of the accused was seized during the course of the investigation and was sent to FSL, Kalina for analysis. It is pointed out that despite repeated reminders the FSL, Kalina has not analysed the data and submitted the report. It is to be noted that in the absence of FSL report it would not be possible for the Trial Judge to commence the trial. The accused, in my opinion could not be held responsible for this. The accused has been languishing in jail from 28/09/2021.

5. At the stage of deciding bail application the merits of the matter cannot be gone into. The material collected and compiled in the charge-sheet cannot be tested on the touchstone of credibility.

For the purpose of appreciation of the submissions made in support of the bail application, the court has to take into consideration the entire material. On consideration of the material, prima facie the Court has to decide whether the case in question is fit to exercise the discretion in favour of the accused or not. The victim, on the date of the incident was 23 years old. She has two children. The accused on the date of the incident was 24 years old. It is the case of the prosecution that from May-2021 to July-2021 the victim was blackmailed and subjected to sexual assault by the accused. The victim all along was residing with her husband. She did not make any complaint to her husband. The relatives of the victim, to whom allegedly the obscene videos were forwarded have stated that they have deleted the videos received from the accused. The victim has stated that her mobile phone, in which this data was stored, had lost. In my view, all these facts and circumstances are in favour of the accused. In the facts and circumstances, in my view further incarceration of the accused is neither necessary nor warranted. The prosecution is not in a position to make concrete statement as to the time, that would be taken for analysis of the mobile data. In my view therefore, the accused cannot be kept behind bars for indefinite

period awaiting the FSL report. The apprehension put-forth by the learned APP can be taken care of by imposing appropriate conditions. Hence, following order:-

ORDER

- (i) The application is allowed;
- (ii) The Applicant-Abubakar Aurangjeb Shaikh, be released on bail in Crime No.1048 of 2021 registered at Kasturba Marg Police Station, Borivali, Mumbai, for the offences punishable under Sections 376(2)(n), 354-A, 354-D and 376 of the Indian Penal Code, 1860 and Section 67(A) of the Information Technology Act, 2000, on his furnishing PR. Bonds in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (iii) The Applicant shall not enter the locality where the victim has been residing viz. Borivali.
- (iv) The Applicant shall not directly or indirectly tamper with the prosecution evidence;
- (v) The Applicant shall not pressurise, threaten or

induce the prosecution witnesses directly or indirectly.

- (vi) The Applicant shall attend Kasturba Marg Police Station, Borivali, Mumbai on the first day of every month between 11.00 a.m. to 1.00 p.m., till completion of the trial.

6. It is made clear that observations made herein above be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial Court.

7. The application stands disposed of in above terms.

(G.A. SANAP, J.)