

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3333 OF 2022

Sani @ Shani Gauri Yadav ... Applicant

V/s.

State of Maharashtra and Ors. ... Respondents

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Mr. R.R.Tripathi, Advocate for Applicant.

Ms. Pallavi N. Dabholkar, APP for Respondent-State.

Ms. Gargi Prakash Joshi, Advocate (appointed) for Respondent No.3.

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CORAM : G. A. SANAP, J.

DATE : 8th NOVEMBER, 2023

P C:-

1. Applicant/ accused No.1 has made this application for bail in Crime No.5 of 2022 registered with Kurar Police Station, Mumbai for the offences punishable under Sections 363, 376, 34 of Indian Penal Code, 1860 (for short "IPC") and under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

2. I have heard learned Advocate for the Applicant/accused No.1 and learned APP for State.

3. Learned Advocate for the accused submitted that there is no evidence of any sexual assault on the victim by the accused. Learned Advocate submitted that at the time of medical examination as well as at the time of recording the statement under Section 164 victim has categorically stated that there was love affair between her and accused No.1 and the alleged act was consensual. Learned Advocate submitted that accused has been falsely implicated in this case on the report of the mother of the victim. Learned Advocate submitted that possibility of the completion of a trial in a near future is very bleak. It is submitted that, therefore, further incarceration of the accused for indefinite period is not warranted. Learned Advocate submitted that accused is ready to abide by the conditions that may be imposed by the Court.

4. Learned APP submitted that on the date of incident the victim was 13½ years old and therefore the defence of a consensual act is not available to the accused. Learned APP on the basis of material, compiled in the charge-sheet submitted that no case has been made out to release the accused on bail. Learned APP further submitted that possibility of tampering with prosecution evidence cannot be ruled out in case of the release of the accused on bail. Learned Advocate appointed to represent Respondent No.2 has adopted the submissions made by the learned APP.

5. Perusal of the record indicates that on the date of the incident, victim was 13½ years old. In view of this factual position, the defence of a consensual act is not available to the accused. However, the application made by the accused needs consideration in the backdrop of the material placed on record before this Court. The victim in the statement recorded before the police has narrated the incident. In her statement before the police, she has stated that accused forcefully conducted sexual intercourse with her. Statement was recorded before the learned Magistrate under Section 164 of Cr.P.C. Learned APP placed the said statement before this Court at the stage of argument. Perusal of this statement would show that the victim has not made any allegation against the accused. On the contrary, she has stated that there was love affair between her and accused. She has further stated that the accused did not commit sexual act against her consent. Perusal of the statement of the victim recorded by the learned Magistrate would show that she is capable to understand the consequences of act committed by her. It is to be noted that on account of age of understanding the consequences of her act she has made such a statement before the learned Magistrate. In my view, this fact is required to be taken into consideration while deciding the bail application. The accused is languishing in jail for about two years. In the teeth of the materials

and the statement of the victim recorded under Section 164 further incarceration of the accused is not warranted. The apprehension put forth by the learned APP can be taken care of by imposing appropriate conditions.

6. Accordingly, I proceed to pass the following Order:

ORDER

- (i) Applicant - Sani @ Shani Gauri Yadav be released on bail in Crime No. 5 of 2022 registered with Kurar Police Station, Mumbai, on furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with solvent surety in the like amount.
- (ii) The Applicant shall not in any manner tamper with the prosecution evidence.
- (iii) The Applicant shall not in any manner pressurise or threaten the victim and the family members of the victim and the prosecution witnesses.
- (iv) Applicant shall keep himself away from the Malad, Mumbai area.

7. The Bail Application stands disposed of.

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2023.11.10
18:32:03 +0530

(G. A. SANAP, J.)