

SA Pathan

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

BAIL APPLICATION NO.3220 OF 2022

Sushil Kumar Chouhan	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**INTERIM APPLICATION NO.4627 OF 2022
IN
BAIL APPLICATION NO.3220 OF 2022**

Shweta Karan Singh	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Amit Munde, for the Applicant in ABA.

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

Mr. Fahad Qureshi a/w Mr. Shubham Upadhyay, for the Intervener/Applicant in IA No.4627 of 2022.

CORAM : AMIT BORKAR, J.

DATED : JULY 27, 2023

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.') in connection with C.R. No.I-327 of 2019 registered with Kharghar police station, for offences punishable under Sections 376, 328, 506 r/w 34 of the Indian Penal Code (for short 'IPC') and under Section 3(2) of Black Magic Act.

2. According to prosecution, the applicant is an Astrology, in

connection with the said occupation, the victim's mother came in contact with the applicant. On 31 October 2018, the applicant stay with victim's family and convinced them about black magic in their home. On 1 November 2018, ritual was fixed. The victim was accompanied by her mother and father at the time of said ritual, when the victim's mother went inside, the applicant had given chanting water to drink her, resulting into she became unconscious. The applicant removed her cloths and had sexual incident with the victim. The applicant gave threat to kill her parents, if she disclosed this fact to anybody. Thereafter, the applicant kept physical relation with the victim and used to visit her house regularly after 10 to 12 days. On 6 June 2019, the victim disclosed the said incident to her mother and father. When victim's mother and father were sought explanation, the applicant threatened them. She, therefore, lodged report on 31 August 2019.

3. Learned Sessions Judge by order dated 30 August 2019 rejected the second bail application of the applicant.

4. Learned Advocate for the applicant invited my attention to the material placed on record in the form of photographs and exchange of messages, calls and also based on material contained in the charge-sheet. He submitted that the relationship was consensual. The victim was 31 years old at the time of incident. There are several incident of sexual relationship. The applicant and victim traveled at different places, visited movie theaters which shows relationship between the applicant and victim.

5. *Per contra* learned Advocate for the victim submitted that the

applicant was given threats of killing her parents. He realized on the messages exchanged between the parties in respect of his submission. According to him, the sexual incident under threat, therefore, the applicant does not deserve to be released on bail.

6. Learned APP submitted that, as per material on record, the sexual incident were of forceful nature. The material on record *prima facie* makes out against the applicant.

7. I have perused the charge-sheet with the assistant learned Advocate for the applicant and of the parties. On perusal material on record, following factual scenario *prima facie* emerges:

- a) The victim is 31 years old on the day of incident.
- b) The incident of sexual intercourse occurred from 1 November 2018 to June 2019.
- c) Most of the incident of sexual intercourse occurred when victim's mother and father were present in the house.
- d) First incident as alleged is of 1 November 2018. However, report is lodged on 31 August 2019.
- e) The material placed on record indicate transferred amounts by the applicant to the victim.
- f) The applicant was arrested on 14 September 2019.
- g) Charges are not yet framed.

8. Considering aforesaid factors, it appears further continuation

of detention of the applicant is not justified as aforesaid factor indicate *prima facie* consensual nature of relationship. Ultimately, it is for the trial Court to consider nature of relationship during trial. Hence, following order is passed:

- a) The application is allowed.
- b) The applicant Sushil Kumar Chouhan be released on bail in connection with C.R. No.I-327 of 2019 registered with Kharghar police station, for offences punishable under Sections 376, 328, 506 r/w 34 of IPC and under Section 3(2) of Black Magic Act, on furnishing cash surety in the sum of Rs.25,000/- with one or two sureties in the like amount.
- c) The applicant shall furnish PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount within four weeks from date of his release.
- d) The applicant shall mark his attendance with the concern police station once in a month between between 11:00 am to 2:00 pm till conclusion of trial.
- e) The applicant shall remain present before the trial Court on each date unless specifically exempted by the Trial Court.
- f) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court.
- g) The applicant shall, at the time of execution of the

bond, furnish their address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.

h) The applicant shall not tamper with the evidence of the prosecution and shall not influence the witnesses.

9. The bail application stands disposed of in above terms. No costs.

10. In view of disposal of the bail application, the interim application does not survive and the same stands disposed of accordingly.

(AMIT BORKAR, J.)