

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1989 OF 2023

Abdulkadir @ Toufiq Gulmohammad ... Applicant.
Mujawar

V/s.

The State of Maharashtra & Anr. ... Respondents.

Shri Satyavrat Joshi i/b Shri Ashish S. Vernekar, Advocate for Applicant
Shri Pandurang H. Gaikwad-Patil, APP for the State.

CORAM : ANIL S. KILOR, J.
DATED : 23RD JULY, 2024.

PC:

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.374 of 2022, registered with Police Station, Vishrambagh, Sangli for the offences punishable under Sections 370, 366B, 323, 324, 465, 467, 468, 471, 420 read with Section 34 of the Indian Penal Code, 1860 (for short “IPC”), Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”), Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 (“PITA” for short), Section 14 of the Foreigners Act, 1946 and Rules 3(a), 6(a) of the Passport (Entry into India) Rules, 1950.

3. The learned counsel for the applicant points out that the charge framed by the trial Court in the present matter against the accused Nos.4 to 7 is under Sections 465, 466 and 468 of the IPC. He points out that the applicant is accused No.5 in this case. He further points out that the accused Nos. 6 and 7 have already been released on bail by the trial Court recording detailed reasons in that respect. He further submits that as the charge against the accused Nos.4 to 7 is similar and maximum punishment for the said offence is seven years, upon release of accused Nos.6 and 7 on bail, the accused No.5 is also entitled for parity.
4. He further submits that the allegations against the accused Nos.6 and 7 are more serious than the allegations against the accused No.5. He, therefore, prays for grant of bail to the applicant.
5. On the other hand, Shri Gaikwad, learned APP strongly opposed the application and points out from the statement of Zakariya Gulmohammed Mujawar that the victim is Bangladeshi and she was brought to India and it is alleged that the documents which were submitted by the victim for obtaining birth certificate were forged. He submits that the offence is very serious. The learned APP has further referred to the other material, namely the affidavit filed in Criminal Writ Petition No.3628 of 2022 (*Freedom Firm ..vs.. State of Maharashtra*) to point out the seriousness of the offence. He, accordingly, prays for rejection of the present application.

6. I have gone through the charge-sheet and the material collected by the Investigating Officer during investigation and also the charge framed by the trial Court against the accused Nos. 4 to 7 for the offences punishable under Sections 465, 466, 468 and 471 of the IPC, the maximum punishment is seven years. The applicant is accused No.5 and if the allegations made against the accused Nos. 6 and 7 are considered, it can be seen that the case of the applicant is on a better footing. The learned trial Court, while granting bail to the accused No.6, has made following observations :

“08. I have gone through the investigation papers. Allegation of the prosecution is that, this accused gave reference of the accused no. 07 to accused no. 5 for the birth certificate of accused no. 03 Munni. Allegations against accused no. 07 are that he tampered the record of Sangli Miraj and Kupwad City Corporation and prepared false document of birth certificate of accused no. 03 Munni. This is the allegation. Prima-facie there is nothing to show that, this accused acted as an agent for accused no. 05 or for accused no. 07 or for accused no. 03 in preparing false document. Nothing incriminating is seized from this accused. It seems that, the document which were found in the custody of accused no. 03 were already prepared at somewhere else.

09. Since 9 months this accused is in jail. Now his detention for any purpose of the investigation or interrogation or recovery is not required. Criminal antecedent of this accused is not brought on record. This accused is resident of Miraj. The victims are now not at Miraj or Sangli. Therefore, question of tampering prosecution evidence doesn't arise. It will take time to begun with the trial against this accused. There are only allegations against this accused that he referred accused no. 05 to go to accused no. 07 for his work. Except this there are no other serious allegations against this accused. Considering all these facts and circumstances it is just and proper to release this accused on bail with stringent conditions.”

7. Similarly, while granting bail to the accused No.7, the trial Court has observed thus :

“07. It is pertinent to note that, the new grounds pleaded in this application were not raised during the first bail application. Muster roll from Sangli Miraj and Kupwad City Corporation of accused no. 07 is produced on record. From that muster roll it appears that on the date of issuance of alleged forged birth certificate of accused no. 03 this accused no. 07 was not on duty. Alleged forged certificate is not signed by this accused no. 07 but by some other person. It seems that police have not inquired with that person. Definitely, these are change in circumstances which may raise question on the investigation against this accused no. 07.

08. Now investigation is completed and charge sheet is filed in the Court. Since more than one year this accused no. 07 is in jail. His further detention is not required for the purpose of investigation or trial. No criminal antecedent of this accused no. 07 is brought before this Court. In these facts and circumstances it is just and proper to release this accused on bail. ...”

8. Admittedly, the application of the applicant was rejected by the trial Court prior to the orders passed in favour of the accused Nos. 6 and 7.
9. In the circumstances, I am of the opinion that the applicant is entitled for grant of bail on the principle of parity. Accordingly, I pass the following order:
- i) The Criminal Application is allowed.
 - ii) It is directed that the applicant shall be released on bail in connection with Crime No.374 of 2022, registered with Police Station, Vishrambagh, Sangli for the offences punishable under Sections 370, 366B, 323, 324, 465, 467,

468, 471, 420 read with Section 34 of the Indian Penal Code, 1860, Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956, Section 14 of the Foreigners Act, 1946 and Rules 3(a), 6(a) of the Passport (Entry into India) Rules, 1950, on furnishing P. R. Bond in the sum of Rupees Fifty Thousand with one solvent surety in the like amount;

- iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- iv) Liberty is granted to the State for cancellation of bail if the applicant commits similar offence.
- v) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

The Criminal Application is **disposed of** accordingly.

(ANIL S. KILOR, J)