

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.291 OF 2024

Munir *alias* Munna Mehboob Shaikh .Applicant

Versus

The State of Maharashtra .Respondent

Mr. Prosper D'Souza, Advocate, for the Applicant.

Ms. Supriya Kak, APP, for the Respondent – State.

CORAM: MADHAV J. JAMDAR, J.

DATE: 14.03.2024

P. C.

1. Heard Mr. D'Souza, learned Counsel for the Applicant and Ms. Kak, learned APP for the Respondent – State.

2. The Applicant is seeking bail in connection with C.R. No.232 of 2022 for the offences punishable under Sections 376(i)(d), 366-A, 342 r/w 34 of the *Indian Penal Code, 1860* and under Sections 4, 8 and, 12 of the *Protection of Children from Sexual Offences Act, 2012* registered with the Yeola Taluka Police Station, District-Nashik.

3. The prosecution case is that the victim is a female aged 14 years and 11 months. Her parents are agricultural labourers. The Applicant i.e. Accused No.1 is a labour contractor. He frequently used to visit the house of the victim when her parents went out for work and the

Applicant developed a romantic relationship with the victim. On 24.06.2022 when the incident took place, the Applicant alongwith Accused No.2 – Chetan took the victim on a motorcycle to a lonely place at Wadali, Nandgaon, District – Nashik. The victim was kept in a room with the Accused No.2 and the Accused No.2 had sexual intercourse with the victim. In the morning, the Applicant came in the said room and the victim narrated the incident to him but the Applicant threatened the victim and sexually assaulted the victim.

4. Mr. D'Souza, learned Counsel appearing for the Applicant submitted that this is a case of a love affair. The victim is now got married and in fact, the victim and her mother have given consent to grant bail to the Applicant. He pointed out the 'Bonafide Certificate' of the victim at page No.45 of this Application, which shows her date of birth as 15.04.2007 and a copy of the Aadhar Card which shows her date of birth as 19.07.2007. He submitted that there are two different dates of birth of the victim. Therefore, it cannot be said that the victim was a minor at the time of the incident in question. He submitted that in fact, the parents of the victim were searching for a room and as the victim did not want to get married, she fled with the Applicant.

5. On the other hand, Ms. Kak, learned APP for the Respondent –

State vehemently opposed the Bail Application. She submitted that the case is of sexual assault. She submitted that although it is the case of the Applicant that he was involved in a romantic relationship with the victim, he allowed Accused No.2 – Chetan to sexually assault the victim and therefore there is no substance in the said contention. She pointed out paragraph no.7 of the Order dated 01.12.2022 passed by the learned Additional Sessions Judge, Niphad passed below Exhibit 6 in Special Case No.64 of 2022 rejecting the Bail Application of the Applicant and submitted that the Applicant is a labour contractor and that he had employed the parents of the victim. He took advantage of his position of authority and sexually assaulted the victim as well as allowed his friend – Chetan to sexually assault the victim. She submitted that the two documents i. e. Bonafide Certificate issued by School Authorities and Aadhar Card although show the different dates still the age of the victim is about 15 years. She further submitted that the fact that the mother of the victim and the victim have given consent for granting bail to the Applicant before the learned Trial Court clearly shows that the Applicant is tampering with the prosecution evidence and is influencing the witnesses. She also pointed out medical evidence and submitted that the medical evidence is in consonance with the

prosecution case. She therefore submitted that this is a very serious case and prayed that the Bail Application may be rejected.

6. *Prima facie*, there is a substance in the contention of learned APP appearing for the Respondent – State that the case is very serious where the Applicant has sexually assaulted the victim and has allowed his friend – Chetan also to sexually assault the victim. She is also right in contending that as the Applicant is a labour contractor and as he had employed the parents of the victim, he has misused his position of authority to sexually exploit the victim. Therefore, the victim and her mother had given consent for granting bail to the Applicant in the Trial Court. She submitted that in spite of the said consent given by the victim and her mother, the learned Trial Court dismissed the Bail Application. The reasons given by the learned Trial Court while rejecting the second Bail Application of the Applicant are *inter alia* recorded in paragraph nos.7 and 8 which read as under:

“7] Heard all parties. Perused papers. It is not simple case of sexual contact out of love relations. Even though, victim is having age of understanding, and now, gave consent for bail, still she is under the age of 18 year, and her consent is im-material. The accused is a labour contractor employing parents of victim on the work of others. He took advantage of such position, and kept love relations with their child. The sole intention of accused is to sexually exploit the girl child. With such

intention, he took victim to lonely place with the help of his friend, Chetan. They have kept her confined in one room. Chetan, also took advantage of that situation, and committed sexual intercourse. Thereafter, accused, Munir Shaikh, came over there in the room, and the victim narrated incident of sexual intercourse by friend, Chetan, but accused did nothing. Even, he did not scold, Chetan, about such sexual intercourse. If at all, accused was in real love with the victim, then he would have quarreled with, Chetan, in stead allowed, Chetan, to have intercourse with victim, and that shows that, both of them have taken away victim, to lonely place in order to keep sexual relations, and that amounts to rape.

8] Later development of giving consent by the victim to grant bail cannot be considered as change in the circumstances. Because at the time of earlier bail, she has resisted application, and requested to reject bail. So, there is no change in the circumstances to grant bail to the accused. Hence, his application deserves to be rejected. Hence, order.”

7. Accordingly, no case is made out for grant of bail. The Application stands rejected.

8. It is clarified that the observations made in this order are *prima facie*, and are only for the purpose of considering the Bail Application. The learned Trial Court shall decide the trial independently and uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]