

Shailaja

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

**CRIMINAL BAIL APPLICATION NO.3941 OF 2022**

|                               |   |            |
|-------------------------------|---|------------|
| Motim @ Mutim Estakhar Shaikh | ] | Applicant  |
| Vs.                           |   |            |
| The State of Maharashtra      | ] | Respondent |

a/w

**INTERIM APPLICATION NO.949 OF 2023  
IN  
CRIMINAL BAIL APPLICATION NO.3941 OF 2022**

|                             |   |           |
|-----------------------------|---|-----------|
| Pinkikumari Manish Kanojiya | ] | Applicant |
|-----------------------------|---|-----------|

**IN THE MATTER BETWEEN:**

|                               |   |            |
|-------------------------------|---|------------|
| Motim @ Mutim Estakhar Shaikh | ] | Applicant  |
| Vs.                           |   |            |
| The State of Maharashtra      | ] | Respondent |

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Mr. Ayush Pasbola, for Applicant.

Ms. Anamika Malhotra, A.P.P, for Respondent – State.

Mr. Sarthak P. Shetty, for Applicant in Interim Application No.949 of 2023.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.  
RESERVED ON : 15<sup>th</sup> APRIL, 2024.  
PRONOUNCED ON : 17<sup>th</sup> APRIL, 2024.**

**ORDER:**

1. Applicant is one of the several accused who are being prosecuted by *Dharavi* Police Station, *Mumbai* in connection with C.R. No.295 of 2022 for the offences punishable under Sections 344, 366, 376 (2) (k) (n), 354, 354A, 354B, 354D, 506 (2), 323, 34, 201 and 109 of the Indian Penal Code, 1860 (for short “I.P.C”) and Section 66 (E) of the Information Technology Act, 2000.

2. Few facts of the prosecution’s case can be stated as follows.

3. The victim is residing with her husband and daughter of four years at *Babu Jeevan Chawl, Sant Rohidas Marg, Khambdev, Dharavi, Mumbai*. Her husband deals in trading of textiles. The victim is a frequent user of social media platforms such as Facebook, Instagram etc through her handle “[pinkypkpinky](#)”. She would often upload various photographs and videos on her social media account from her mobile phone gallery.

4. It is the case of the prosecution that since November, 2021, she started receiving numerous phone calls on her mobile number.

On 28<sup>th</sup> October, 2021, she received a lewd message from an unknown number which was noticed by her husband. There was a quarrel between them. Her husband assaulted and threatened her to divorce. It was noticed that the caller was Accused No.3 – Kalim Sheikh.

5. Despite changing her SIM card on 3<sup>rd</sup> November, 2022, the victim continued receiving such calls on her new number also from Accused No.3 – Kalim Sheikh. Initially, the victim avoided to accept the calls of Accused No.3 – Kalim Sheikh, however, accused No.3 persistently sent messages and made all attempts to befriend with her. He even threatened her that he knew everything about her and in case, she refused to befriend with him, she would face serious consequences including danger to her husband and daughter.

6. It is alleged that on 24<sup>th</sup> January, 2022, victim was travelling from *Prayagraj, Uttar Pradesh* to *Mumbai* by *Varanasi Express* with her daughter. When the train reached *Jabalpur* station at 12.00 a.m, Accused No.2 – Hussaid Sheikh snatched her mobile and asked her to follow his instructions, else, he threatened her of dire

consequences. Accused No.2 – Hussaid Sheikh, who is brother-in-law of Accused No.3 – Kalim Sheikh threatened and forced her to deboard train at *Jabalpur* Station. He threatened her of dire consequences, in case, she does not obey. Accused No.2 – Hussaid Sheikh took the victim and her daughter to the State of *Bihar* where they were confined at his house.

7. Accused No.2 – Hussaid Sheikh asked his wife to stay with the victim and her daughter till *Bhai* returns from *Dubai*. (Here “*Bhai*” was referred to Accused No.3 – Kalim Sheikh). On 12<sup>th</sup> February, 2022, victim was taken at *Dhaka, Bihar* by Accused No.2 – Hussaid Sheikh in the house of one Shahaja Sheikh (sister of Kalim Sheikh) and her husband – Motim Sheikh (applicant herein). The victim repeatedly requested the applicant to release her but he did not pay any heed.

8. Thereafter, the victim was taken to *Nepal* on 2<sup>nd</sup> March, 2022. On 3<sup>rd</sup> March, 2022, Accused No.3 – Kalim Sheikh arrived over there. The victim was sexually harassed and raped by Accused No.3 – Kalim Sheikh which he had recorded and preserved on his mobile phone. The victim implored before accused No.3 – Kalim

Sheikh to allow her to return to *Mumbai* and promised that she would return after two months, however, her request fell on deaf ears. Thereafter, on 6<sup>th</sup> March, 2022, she was dropped at *Bairganja* Railway Station. Husband was waiting for her at the station. He was informed by the applicant and his family members that the victim was lost in the market and that they had provided her safe shelter. The victim, however, did not disclose about the incident to anyone and returned to *Mumbai* on 16<sup>th</sup> March, 2022.

9. Accused No.3 – Kalim Sheikh and his sister persistently called and harassed her again and even uploaded her exclusive photographs on social media websites. They, however, threatened her to upload more videos. On 3<sup>rd</sup> April, 2022, victim's husband received a threatening call on his mobile phone wherein the caller had also threatened to defame the victim.

10. Accordingly, an First Information Report came to be registered as above. The said F.I.R was transferred to DCB CID Unit – V, Mumbai and came to be numbered at their instance as Crime No.47 of 2022. Statements of the witnesses were recorded. The victim was sent for medical examination.

*Panchanamas* were drawn. After investigation, a charge-sheet came to be filed.

11. I heard Mr. Pasbola, learned Counsel for the applicant, Ms. Malhotra, learned A.P.P and Mr. Shetty, learned Counsel for the victim. I have perused the charge-sheet.

12. Mr. Pasbola would argue that neither the applicant was involved in the offence of committing forcible sexual intercourse with the victim nor did he circulate photographs and videos of the victim on social media. Only role attributed *qua* the applicant is that he had arranged a shelter for the victim at the instance of the main accused i.e accused No.3 – Kalim Sheikh. It is not the case of the prosecution that the victim was threatened by the applicant or was ill treated during her stay at his house with his wife. *Prima facie*, no motive can be attributed *qua* the applicant.

13. On the other hand, learned A.P.P resisted the application on the ground that complicity and active involvement of the applicant is apparent from the record who wrongfully confined the victim after she was kidnapped by other accused at the behest of accused

No.3 – Kalim Sheikh. He did not report the matter to the Police and, therefore, he is equally a partner in crime with accused No.3 – Kalim Sheikh. She would argue that in case of his release, there would be threat to the victim as well as likelihood of abscondence of the applicant who would not be available for trial in light of the fact that he is not a permanent resident of *Mumbai*.

14. Learned Counsel for the victim also spoke in tune with the learned A.P.P.

15. No doubt, there is nothing on record to indicate that the applicant committed forcible sexual intercourse or rape with the victim nor it is alleged that he threatened her of any dire consequences or outraged her modesty. *Prima facie*, it seems that he actively assisted accused No.3 - Kalim Sheikh by keeping the victim in his custody along with his wife. Nature of accusation *qua* the applicant, *prima facie*, is not as serious as that of the allegations levelled against Accused No.3 – Kalim Sheikh. It is a matter of record that the Trial Court has not yet framed the charge. The applicant is in custody since 1<sup>st</sup> July, 2022. There is no hope of commencing the trial in near future. Since charge-sheet has already

been filed, no fruitful purpose would be served in continuing his detention which may tantamount to pre-trial conviction. As far as apprehension expressed by the victim's Counsel and the prosecutor with regard to influencing the victim or even abscondence of the applicant in case of his release is concerned, adequate care can be taken by imposing suitable conditions. Having taken into consideration the aforesaid circumstances, I am persuaded to grant bail to the applicant. Consequently, the following order is passed;

**: ORDER :**

(a) The application is allowed.

(b) The applicant – Motim @ Mutim Estakhar Shaikh be released upon executing a P.R bond in the sum of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the Special Court in connection with Sessions Case No.838 of 2022 arising out of C.R. No.47 of 2022 registered with DCB CID Unit V, *Kurla, Mumbai*.

(c) The applicant shall attend the office of DCB CID Unit – V, *Kurla, Mumbai* on every Sunday between 9.00 a.m and 11.00 a.m till framing of the charge.

(d) After framing the charge, the applicant shall attend the trial Court on each date scrupulously.

(e) The applicant shall not leave jurisdiction of the trial Court until conclusion of the trial.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with the evidence.

(g) The applicant shall furnish his permanent address and contact details to DCB CID Unit – V, *Kurla, Mumbai*. In case of any change, the same

shall be forthwith communicated to the DCB CID  
Unit V, *Kurla, Mumbai*.

(h) The applicant shall surrender his passport, if he has, with DCB CID, Unit V, *Kurla, Mumbai* forthwith.

(i) The applicant shall not indulge in any offence much less, the offences for which he is being prosecuted.

(j) Needless to say that breach of any of the conditions would entitle the prosecution to pray for cancellation of bail.

16. Application stands disposed of in the aforesaid terms.

17. In view of disposal of the Bail Application, Interim Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]