

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.969 OF 2023

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Rahul Ajaykumar Singh

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Shyamrishi Pathak i/b. S.M. Gaonkar & Associates, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Ms. Afshan Goghari, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 23 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant who is arraigned in C.R. No.180 of 2022 registered with Shreenagar police station, Thane for the offences punishable under sections 376, 420 and 406 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The first informant respondent No. 2 is 27 years of age. The first informant lodged a report with the allegations that during the period February, 2020 to February, 2022 the applicant, whom she had known from her school days, induced her to develop proximity with him and by giving false promises of marriage, the applicant had forcible sexual intercourse with her, without her consent. The first informant further alleged that the applicant also made her to

part with a huge amount and ornaments on one or the other pretext. The applicant had not returned any of the amounts which was paid by first informant to the applicant.

4. In the month of February, 2022, the applicant's phone was not reachable. Upon inquiry, it transpired that the applicant was detained in prison. Further inquiries revealed that the applicant was already married and had a son also. Thus, the first informant realized that the applicant had sexually exploited her by giving false promises of marriage though he was already married. The first informant thus lodged the report.

5. The learned counsel for the applicant submitted that the applicant and the first informant were in a relationship for more than two years. The first informant was aware of the situation in life of the applicant. The applicant came to be arrested in connection with another matter. The applicant and the first informant fell apart. Thereupon, the first informant has lodged report with exaggerated allegations. It was submitted that the applicant has also transferred certain amounts to the account of respondent No. 2. Nonetheless, so far as the allegations of cheating and breach of trust, the applicant is willing to repay the amount of Rs. 75,000/- and deposit the amount equivalent to 43.700 gms of 22 caret gold which the applicant had pledged with a lender to raise loan.

6. Applicant has filed an affidavit in support of aforesaid statement. Paragraph Nos. 2 and 3 of the affidavit read as under:-

2] At the outset, I say that I am ready and willing to deposit amount equivalent to gold weighing 43.700 gms @ 22 carets along with an amount of Rs. 75,000/- before the trial Court within 3 months to show my bonafides before this Court.

3] I say that I would deposit amount equivalent to gold weighing 43.700 gms @ 22 carets along with an amount of Rs. 75,000/- before the trial Court without prejudice to my defence and/or admitting the guilt of the offence reserving right of my defence.

7. The learned APP resisted the prayer for bail. It was urged that apart from the sexual exploitation, the allegations in the FIR indicate that the applicant had physically and financially exploited the first informant.

8. The learned counsel for the respondent No. 2/first informant also resisted the prayer for bail. It was urged that the first informant was not at all aware of the marital status of the applicant and taking undue advantage of the situation of the first informant, the applicant had sexually exploited to her.

9. I have carefully perused the allegations in the FIR and material on record. Prima facie, it appears that the applicant and first informant had known each other from the school days. It appears that proximity developed between the applicant and first informant somewhere in the month of January, 2020. It further

appears that the first incident of alleged sexual exploitation occurred in the month of February, 2020. The relationship lasted till February, 2022. In the circumstances of the case, whether the first informant was aware of the marital status of the applicant would be a matter for adjudication at the trial. Having regard to the period for which the relationship between the parties lasted, the question as to whether the consent of the victim for sexual intercourse was given under misinception of facts is also a matter for adjudication at the trial. Prima facie, it appears that the applicant and the first informant were in a relationship.

10. As regards the allegations of cheating and breach of trust, the applicant has volunteered to bring back the allegedly defrauded amount without prejudice to his rights and contentions. The afore-extracted statements made in the affidavit are accepted as an undertaking given to the Court.

11. In the totality of the circumstances and having regard to the period of incarceration and the fact that the trial is not likely to be conclude in a near future, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] As undertaken, without prejudice to the rights and contentions of the applicant, the applicant shall deposit the amount equivalent to 43.700 gms of 22 caret gold based on the price prevailing on the previous day of deposit and a further amount of Rs. 75,000/- before the Court of learned Magistrate exercising jurisdiction over Shreenagar police station, Thane (in RCC/2786/2023) within a period of three months.
- 3] Upon fulfillment of the aforesaid conditions, the applicant be released on bail in C.R. No.180 of 2022 registered with Shreenagar police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Shreenagar police station on the first Monday of every alternate month in between 11 am to 1 pm, till conclusion of the trial.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 5] The applicant shall furnish his contact number and

residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)