



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1261 OF 2023**

Akshay Jitendra Dulgach	...	Applicant
versus		
State of Maharashtra and Anr.	...	Respondents

Mr. Kalam Shaikh with Ms. Sana Shaikh, for Applicant.
Mr. S.R.Aagarkar, APP for State.
Ms. Ilsa Shaikh, for Respondent No.2.

CORAM: N.J.JAMADAR, J.

DATE : 11 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned for the offences punishable under Sections 376, 323, 504 and 506 of the Indian Penal Code and Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, has preferred this application to enlarge him on bail.
3. The victim – Respondent No.2, 17 years of age, lodged a report with the allegations that the applicant used to reside in the adjacent building. She became acquainted with the sister in law of the applicant. There were family relations. Friendship developed between the applicant and the victim. In the month of August 2019, the applicant had allegedly called the victim at his home. The sister in law of the victim left to sleep. Thereafter, the applicant allegedly had forcible sexual intercourse

by giving promise of marriage. The applicant had allegedly video-recorded the act. The marriage of the applicant was solemnized in the month of December 2020. Even thereafter, the applicant continued to exploit her by threatening to upload the videos. Hence, the first informant narrated the incident to her parents and lodged the report.

4. Learned Counsel for the applicant submitted that the applicant and the victim were in a relationship. There is a material discrepancy in the FIR and the statement of the victim recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure, 1973. In her statement before the learned Magistrate, the victim had alleged that the sister in law of the applicant had called her and the applicant had offered her cold drinks laced with an intoxicating substance and had forcible physical relations with her. The applicant, thereafter, had exploited her repetitively. This version is clearly at variance with the allegations in the FIR that proximity had developed between the applicant and the victim and they were in a relationship. Learned Counsel further submitted that the applicant has been in custody since 2 November 2021 and it is unlikely that the trial can be concluded within a reasonable period.

5. Learned APP resisted the prayer for bail. It was submitted that the applicant had exploited a child even after he got married. It was submitted that the medico legal examination report lends support to the version of the first informant. Therefore, the applicant does not deserve exercise of discretion.

6. I have perused the allegations in the FIR, statement of the victim recorded under Section 164 of the Code and the material on record. Birth certificate of the victim indicates that the victim was born on 28 May 2004. In the FIR, the victim alleged that she was first exploited by the applicant in the month of August 2019. In the statement of the victim recorded under Section 164 of the Code, the victim had not disclosed the precise period during which she was first exploited by the applicant. However, in the history narrated before the Medical Officer, the victim stated that she was first exploited by the applicant in the month of February 2020. Indeed, in the said history, the victim had narrated the circumstances in which she was first exploited by allegedly offering her intoxicant laced soft drink.

7. The situation which thus, *prim facie*, obtains is that there is material to show that the victim has consistently stated that she was sexually exploited by the applicant. *Prima facie*, medico legal examination supports the version of the victim. Even if the alleged first sexual exploitation is considered to have occurred in the month of February 2020, if not in the month of August 2019, as narrated by the victim in the FIR, it is evident, the victim had not completed the age of 16 years when she was allegedly first exploited. The offence would thus, *prima facie*, fall within the ambit of sub-Section (3) of Section 376 which prescribes an enhanced punishment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for person's remainder life.

8. It is true there is a variance in the version of the victim, as regards the circumstances in which she was first exploited by the applicant. However, at this stage, the said aspect does not assume significance as, in any event, the question of consent of the victim is immaterial. What further exacerbates the situation is the allegation that the applicant continued to exploit the victim even after the applicant got married.

9. Learned Counsel for the Applicant attempted to salvage the position by submitting that the victim being the neighbour was fully aware of the situation in life of the applicant and, yet, they were in a relationship. I am afraid to accede to this submission at this stage, especially having regard to the fact that when the victim was allegedly first exploited, she appeared to be below 16 years of age.

10. Thus, I am not impelled to exercise the discretion in favour of the applicant. However, having regard to the nature of the accusation, age of the victim as well as the applicant, it may be expedient to request the learned Additional Sessions Judge seized with Sessions Case arising out of C.R.No.1071 of 2021 to make an endeavour to commence and conclude the trial as expeditiously as possible and, preferably, within a period of one year from the date of communication of this order.

10. Hence, the following order :

ORDER

- (i) The Application stands rejected.

(ii) The learned Additional Sessions Judge seized with Sessions Case arising out of C.R.No.1071 of 2021 shall make an endeavour to commence and conclude the trial as expeditiously as possible and, preferably, within a period of one year from the date of communication of this order.

(iii) 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.

(N.J.JAMADAR, J.)