

Sayali Upasani

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

BAIL APPLICATION NO.- 1314 OF 2023

Stiffanraj Murgesh Nadar

... Applicant

Vs.

The State of Maharashtra and Others

...Respondents

Ms. M. B. Shirsat with Fehmida Ahmed and Deepak Thakur,
for Applicant.

Mr. S. R. Agarkar, APP for State-Respondent No. 1.

Ms. Apurva Gupte, for Respondent No. 2.

Mr. Vishal Chandanshive, PI, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 7th MARCH, 2024

PC:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) The applicant, who has been arraigned in CR No.467 of 2022 registered with Sewree Police Station, Mumbai, for the offences punishable under Sections 377, 354C, 292 and 201 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), Sections 66E and 76A of the Information Technology Act, 2000 ("IT Act") and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO"), has preferred this application to enlarge him on bail.

3) The gravamen of indictment against the applicant and the co-accused is that the applicant and co-accused - Ramesh had surreptitiously prepared obscene videos of the females in their private moments. Lawrence, the first informant had found a pendrive containing such obscene videos in his house. Those videos in the pendrive were transferred by Lawrence to his desktop computer.

4) At the outset, the learned Counsel for the applicant submitted that the co-accused – Ramesh has been released on bail by this Court by an order dated 3rd January, 2024. The applicant is similarly circumstanced.

5) The learned APP and the learned Counsel, appointed to espouse the cause respondent No. 2, contest the submissions on behalf of the applicant. It was submitted that the role of the applicant is distinct from that of Ramesh, who has been released on bail. In fact, the pendrive which contained obscene videos belonged to the applicant. Therefore, the applicant does not deserve to be released on bail.

6) While releasing the co-accused -Ramesh on bail, this Court had observed as under:-

9. "I have carefully perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents annexed with it including the statements of the victims and

Lawrence. The prosecution specifically alleges that the videos were prepared by co-accused Satish. The applicant had allegedly allowed the co-accused to use his room to take those videos. It is further alleged that co-accused Sarvanand and Satish destroyed the evidence by reformatting the mobile phone handset of Lawrence.

10. Evidently, the incident of sexual exploitation of a male friend of Sarvanand, by co-accused Sarvanand and Satish, had occurred prior to two years. Prima facie, the applicant has no nexus with the said incidents and, therefore, the offence under Section 377 of the Penal Code cannot be attributed to the applicant.

11. Secondly, as regards the offences under Sections 66E and 67A, the role attributed to the applicant is that of facilitating the recording of videos by the co-accused from his room. The statement of victim "L" prima facie indicates that the videos were taken from the room which was in the occupation of the applicant for a while. The learned Counsel for the applicant attempted to draw home the point that the said video was allegedly recorded in the month of February, 2001 by which time the applicant had already vacated the said room. I am afraid, at this stage, the said issue cannot be delved into elaborately.

12. Nonetheless, the situation which emerges is that the offence under Section 354C, which can be attributed to the applicant, entails punishment which may extend to three years and it is bailable. Offence under Section 12 of the POCSO Act also entails punishment which may extend to three years. Likewise Section 66E of the IT Act provides punishment of three years for violation of privacy. Section 67A of the IT Act entails punishment for a term which may extend to five years and for subsequent conviction, the punishment may extend to seven years.

13. The applicant has been in custody since 6th September, 2022. Investigation is complete for all intent and purpose. The charge-sheet has been lodged. At this stage, the genesis of the occurrence cannot be lost sight of. Lawrence, who is the brother of co-accused Stephen, allegedly found a pendrive in his home, of which co-accused Stephen Nadar was also an occupant. The said pendrive allegedly contained the offending videos.

14. In the aforesaid view of the matter, especially having regard to the allegations that the applicant had facilitated the recording of videos, particularly of victim "L", by allowing the co-accused to use his room, which may fall within the dragnet of the offences under Section 354C of the Penal Code and Section 12 of the POCSO Act and entail punishment which may extend to three years and the applicant has already been in custody for more than one year and three months, I am inclined to exercise the discretion in favour of the applicant. The apprehension on the part of the prosecution can be taken care of by imposing stringent conditions..."

7) In the backdrop of the nature of the accusation, the aforesaid reasons govern the facts of the case of the applicant, as well. The applicant has been in custody since 1st September, 2022. Having regard to the nature of the accusation and the witnesses which the prosecution may be required to examine in support of the charge against the applicant and the co-accused, it is unlikely that the trial can be concluded within a reasonable period.

8) I am, therefore, inclined to exercise the discretion in favour of the applicant by imposing stringent conditions.

9) Hence, the following order.

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail in CR No.467 of 2022 registered with Sewree Police Station, Mumbai, for the offences punishable under Sections 377, 354C, 292 and 201 read with Section 34 of the Indian Penal Code, 1860, Sections 66E and 76A of the Information Technology Act, 2000 and Section 12 of the Protection of Children from Sexual Offences Act, 2012, on furnishing 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 trial Court.
- (iii) The applicant shall attend Sewree Police Station, Mumbai, on the first Monday of every alternate month between 10.00 am. to 12.00 noon for the period of two years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not contact the first informant or any of the victims or any of the witnesses or the absconding accused in any manner whatsoever or give

threat or inducement or promise to the victims or first informant or any of the witnesses or persons acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any Police Officer.

(v) The applicant shall not enter the limits of Sewree Police Station till the conclusion of the trial, except for attending the Police Station on the specified days.

(vi) The applicant shall furnish the details of his permanent address and contact number to the Investigating Officer and intimate the change, if any, therein.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.]