

Sayali Upasani

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

BAIL APPLICATION NO.- 1864 OF 2023

Asif Mohammad Shanif Ansari ... Applicant

Vs.

The State of Maharashtra ...Respondent

**SAYALI
DEEPAK
UPASANI**

BAIL APPLICATION NO.- 1636 OF 2023

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Miraj Ahmad Mohammad Yusuf Ansari ... Applicant

Vs.

The State of Maharashtra ...Respondent

Mr.Asif Choudhary, for Applicant in BA/1864/2023.

Mr. Shrikant Rathi, for Applicant in BA/1636/2023.

Mr. Bapu Vitthalrao Holambe Patil, APP for State-Respondent

Mr. Salman Anwar Khan, for Respondent No. 2 in
BA/1636/2023.

Victim is present in Court.

CORAM:- N. J. JAMADAR, J.

DATED:- 6th MARCH, 2024

PC:-

1) Heard the learned Counsel for the applicant, the learned APP for the State and the learned Counsel for the respondent No. 2- Victim.

2) The applicants, who are arraigned in CR No. 507 of 2022 registered with Shanti Nagar Police Station, Thane, for the offences punishable under Section 376 (D) and 506 of the Indian Penal Code, 1860, have preferred these applications to enlarge them on bail.

3) The indictment against the applicants can be summarised as under:-

(a) The marriage of the victim was solemnized with Miraj, the applicant in BA No. 1636 of 2023, on 16th November, 2021. It was the second marriage of the victim with Miraj. The marriage was dissolved in the month of March, 2022 under a 'Khulanama'. The first informant alleged, even after the dissolution of the marriage, the victim and Miraj continued to cohabit with mutual consent. Asif, the applicant in BA No. 1864 of 2023, used to occasionally visit their house.

(b) The victim alleges on 16th August, 2022 at about 2.00 am, Miraj had invited Asif to their home. Upon being questioned,

Miraj threatened her. At about 3.00 am, Miraj asked the victim to have physical relations with Asif. Upon her refusal, Miraj forcibly undressed her and, thereafter, both the applicants had forcible sexual intercourse with her. After apprising the said incident to her mother, the victim lodged a report on 20th August, 2022.

4) Mr. Rathi, the learned Counsel for the applicant – Miraj submitted that having regard to the place where the alleged occurrence took place, which is situated in a densely populated area, and a few houses away from the house of the mother of the victim, the version of the first informant is inherently improbable.

5) The delay in lodging the FIR, according to the learned Counsel for the applicant, also erodes the credibility of the first informant's version. Attention of the Court was invited to the medico-legal examination which does not indicate that the victim had sustained any injuries associated with the alleged forcible sexual intercourse.

6) The applicants have been roped in as disputes arose between the parties over the payment of alimony which was not agreed to be paid at the time of dissolution of the marriage.

7) Mr. Choudhary, the learned Counsel for the applicant – Asif, supplemented the submissions of Mr. Rathi. It was urged that Asif has been roped in only for being a friend of Miraj.

8) In opposition to this, the learned APP submitted that there are clear and categorical allegations of sexual exploitation. At this stage, there is no reason to disbelieve the version of the victim.

9) The learned Counsel for the victim also opposed the prayer for bail. Attention of the Court was invited to the contentions in the affidavit-in-reply filed on behalf of the victim. It was submitted that there is an imminent danger to the life of the victim, in the event the applicants are released on bail as they are residing in the same area.

10) I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 (“the Code”) and the documents annexed with it. In the FIR, the victim has made the allegations of forcible sexual intercourse against both the applicants. The mother of the victim seeks to lend support to the claim of the victim by asserting that on 20th August, 2022, upon being inquired, the victim had narrated acts of sexual exploitation to her. The statement of the friend of the mother of the victim does

not advance the cause of the prosecution. The medical examination report does indicate that the victim had narrated history of sexual exploitation.

11) However, the allegations against the applicants are required to be appreciated in light of the broad probabilities of the case, albeit prima facie. Evidently, the victim and Miraj allegedly cohabited together despite dissolution of marriage. In the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, the victim has narrated a continuous course of harassment and ill-treatment at the hands of Miraj, even after dissolution of marriage. When the marital bond between Miraj and the victim had come to an end, would the victim continue to suffer harassment and ill-treatment, without demur, would be a matter for consideration at trial. In this backdrop the submissions on behalf of the applicants touching upon the probabilities of the case, in view of the place of occurrence, delay in narrating the incident to the mother of the victim and reporting the matter to the police, cannot be completely brushed aside.

12) Indeed the allegations are grave in nature. However, in the backdrop of the relations between Miraj and victim, the marital

discord and the broad probabilities of the case, a prima facie case for exercise discretion in favour of the applicants can be said to have been made out.

13) Investigation is complete for all intent and purpose. Charge-sheet has been lodged. Further custodial interrogation of the applicants does not seem to be warranted. Apprehension on the part of the prosecution and victim can be taken care of by imposing appropriate conditions.

14) Hence, the following order.

: O R D E R :

- (i) The applications stand allowed.
- (ii) The applicants be released on bail in CR No. 507 of 2022 registered with Shanti Nagar Police Station, Thane, for the offences punishable under Section 376 (D) and 506 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.30,000/- each, with one or two sureties in the like amount, to the satisfaction of the trial Court.
- (iii) The applicants shall mark their presence at the Shanti Nagar Police Station, Thane, on the first Monday of every month between 10.00 am to 12.00 noon for a

period of three years or till conclusion of trial, whichever is earlier.

(iv) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the witnesses and any of the persons acquainted with the facts of the case.

(v) The applicants shall not enter the limits of Shanti Nagar Police Station, Thane police station for a period of three years or till conclusion of trial except for the purpose of marking their presence at the Shanti Nagar Police Station, Thane and attending the proceedings before the jurisdictional Court.

(vi) 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 applicants and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]