



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1828 OF 2023**

Kabir Rangu Mulla

... Applicant

versus

The State of Maharashtra and Anr.

... Respondents

Mr. Himanshu S. Shinde, for Applicant.

Mr. Tanveer Khan, APP for State.

Mr. Ketan A. Dhavle, appointed for Respondent No.2.

PSI S.L.Doke, Borivali Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 18 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.121 of 2021 registered with Borivali Police Station for the offences punishable under Sections 376(2)(i)(n), 328, 506 of Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, has preferred this application to enlarge him on bail.
3. The first informant resides at Borivali along with her two daughters. The elder daughter (victim) was 13 years of age. On 26 February 2021, the first informant was informed that the applicant was exploiting the victim. Upon the victim being taken into confidence, the latter informed her that the applicant had developed proximity with the victim since 3-4 months prior to the lodging of the report. The applicant used to give mobile phone to the victim and speak with her on the said

mobile phone and get the same back after they spoke. By giving promise of marriage, the applicant had subjected the victim to penetrative sexual assault. The applicant allegedly had forcible sexual intercourse with the victim on 3-4 occasions.

4. Mr. Shinde, learned Counsel for the Applicant, submitted that there is a glaring inconsistency in the version of the first informant and that of the victim. The medical evidence falsifies the allegations of sexual exploitation. In fact, the victim had narrated that the applicant had tried to have forcible sexual intercourse with her. This implies that there was, at best, an attempt. An endeavour was made by Mr Shinde to take the Court through the statements of the victim recorded under Section 161 and 164 of the Code, and point out the alleged inconsistencies therein. In the face of such inconsistencies in the ocular account and the medical evidence, the applicant deserves to be enlarged on bail, submitted Mr. Shinde.

5. In opposition to this, Mr. Khan, learned APP, submitted that there is overwhelming evidence to indicate that the applicant had subjected the victim to aggravated penetrative sexual assault. The victim was barely 13 years of age. Therefore, the applicant does not deserve to be enlarged on bail.

6. Mr. Dhavale, learned counsel appointed to espouse the cause of the Respondent No.2, also strongly opposed the prayer for bail.

7. I have perused the report under Section 173 of the Code and the documents annexed with it, including the statement of the victim recorded under

Section 164 of the Code. I find it rather difficult to accede to the submission of Mr.Shinde that there are irreconcilable inconsistencies in the statements recorded under Sections 161 and 164 of the Code. The victim has categorically stated that the applicant had subjected her to penetrative sexual assault. In both the statements, the victim has stated that the applicant developed proximity with her and made her to speak with him on the mobile phone which he used to sneak through into her room. The applicant had taken the victim to the bathroom of a neighbour and exploited her. On one occasion, the applicant had given her a sweet, laden with sedative, and after she woke up, she realized that the applicant had sexually exploited her. The victim further narrated that, on another occasion, the applicant had forcibly taken her to an empty room and again exploited her. Minor variation in the statements of the victim recorded under Sections 161 and 164 of the Code, at this stage, cannot be pressed into service to jettison away the allegations of the victim over-board.

8. The endeavour of Mr. Shinde to bank upon the medico legal record to show that the allegations are false, also does not merit countenance at this stage. The victim has narrated before the Medical Officer that she was subjected exploitation by the applicant. The history recorded by the Medical Officer that the applicant had tried to have forcible sexual intercourse with the victim 3-4 times, cannot be read out of context to urge that, at best, it was a case of attempt.

9. At this juncture, the categorical statements of the victim find support in

the statements of the first informant as well as the medical report. In substance, a strong prima facie case is made out against the applicant. I am, therefore, not inclined to exercise discretion in favour of the applicant.

10. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) 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.)