

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2057 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Kalubhai Kanji Parmar

...Applicant

Versus

State of Maharashtra and anr.

...Respondents

Mr. S. H. Mishra, for the Applicant.

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

PSI S. L. Chakane, Dahisar Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 12th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant has been arraigned in CR No.359 of 2017 registered with Dahisar Police Station, Mumbai, for the offences punishable under Sections 376 and 506(2) of the Indian Penal Code, 1860 ("the Penal Code").
3. The applicant is 56 years of age. The applicant used to visit the house of the first informant as he was a friend of her husband, even in the absence of her husband. On 25th August, 2017 the applicant visited her house while she was alone. The applicant allegedly forcibly committed sexual

intercourse without her consent by threatening to kill her. The first informant lodged the report on 29th August, 2017.

4. The learned Counsel for the applicant submitted that the applicant is in custody since 29th August, 2017. Five witnesses have been examined. It is unlikely that the trial may be completed in a near future.

5. The learned Counsel for the applicant further submitted the allegations in the FIR do not *prima facie* make out a case for an offence punishable under Section 376 of the Penal Code. It was submitted that there was a delay of four days in lodging the FIR. Moreover, on account of the strained relations over a financial dispute, the applicant has been falsely roped in.

6. The learned APP resisted the prayer for bail. It was submitted that since five witnesses have been examined, the trial may conclude in near future. Therefore, the applicant does not deserve the exercise of discretion at this stage.

7. The Court is informed that evidence of the prosecutrix is over. It is pertinent to note that the incident allegedly occurred in the month of August, 2017. At the time of commission of the alleged offence, Section 376 of the Penal

Code prescribed punishment, which shall not be less than seven years, but may extend to imprisonment for life. The applicant has been in custody for more than six years and eight months. In the circumstances, the further detention of the applicant seems to be wholly unwarranted.

8. Moreover, the evidence of the prosecutrix has been recorded. At this stage, there is no possibility of tampering with prosecution evidence and threatening the witnesses. The applicant appears to have roots in the society. I am, thus, inclined to exercise the discretion in favour of the applicant primarily on account of the long period of incarceration as an undertrial prisoner, which infringes upon the right to life.

9. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant Kalubhai Kanji Parmar be released on bail in CR No.359 of 2017 registered with Dahisar Police Station, Mumbai, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at the concerned police station on the first Monday of every month in between 10.00 am. to 12.00 noon till conclusion of the trial.

- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, 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.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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.]