

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2226 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.05.04
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Roshan Kaiyum Sheikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Amit Bhate, a/w Shon Gadgil, for the Applicant.

Ms. Gauri Rao, APP for the State/Respondent No.1.

PI Kalange Amar, V. B. Nagar Police Station, Mumbai,
present.

CORAM: N. J. JAMADAR, J.

DATED: 3rd MAY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.173 of 2020 registered with Sahar Police Station, Mumbai, for the offences punishable under Sections 376, 420 and 506 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.
3. The first informant, a 44 year old lady, lodged a report with the allegations that in the year 2017 she became acquainted with the applicant as the latter represented that he would assist the niece of the first informant in securing admission in MIT Gurukul. Proximity developed.

4. On 30th December, 2017 the applicant called the first informant at Lalit Hotel and offered her coffee mixed with a substance. After a while the first informant found herself in a room. The applicant had allegedly sexually exploited her. Thereafter the applicant started to exploit the first informant by giving promises of marriage. The applicant extorted money from the first informant on one or the other pretext. In a years time, the applicant had extorted a sum of Rs.15,00,000/- from the first informant by giving threats that he would make the photos and videos of the first informant viral. Unable to bear the harassment and exploitation the first informant attempted to commit suicide on 21st December, 2018 by consuming sleeping pills. However, on account of the fear of infamy due to the disclosure of relationship, the first informant did not report the matter to police. The applicant continued to harass the first informant and demand money. Eventually, the first informant lodged the report on 13th June, 2020.

5. The learned Counsel for the applicant submitted that the applicant and the first informant were in a relationship for more than two years. The first informant was already married. When the relationship turned sour, the first

informant lodged the report. It was submitted that there is voluminous material to show that the applicant and the first informant were in a relationship.

6. The learned APP countered the submissions on behalf of the applicant. Attention of the Court was invited to the extract of the WhatsApp chat which indicates that the applicant has demanded money from the first informant. It was submitted that the first sexual intercourse was not with the consent of the first informant. Subsequently, the applicant exploited the situation of the first informant and extorted huge amount from the first informant.

7. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. From the perusal of the FIR it becomes evident that the relationship lasted from 2017 to 2020. The material on record indicates that the first informant had opportunities to make the grievance about the exploitative conduct of the applicant at last in the month of December 2018, when she had allegedly consumed sleeping pills and the police had visited hospital. At that point of time, *prima facie*, the first informant was disabused of the ill-influence of the applicant. It appears that even thereafter the relationship continued.

8. In the aforesaid backdrop, the question as to whether the consent of the first informant for sexual intercourse was vitiated on account of misconception of facts would be a matter for adjudication at the trial. The allegations are required to be appreciated through the prism of the situation in life of the parties especially, the age of the first informant and her marital status.

9. I am, therefore, inclined to exercise the discretion in favour of the applicant.

10. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.173 of 2020 registered with Sahar Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Sahar Police Station 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 her relatives and tamper with the prosecution evidence in whatsoever nature. 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 stands disposed.

[N. J. JAMADAR, J.]