

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1900 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.01.25
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Idrees Ibrahim Khan

...Applicant

Versus

State of Maharashtra and anr.

...Respondents

Mr. R. M. Momin, a/w Tooba Momin, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent No.1.

Mr. Sarthak Diwan, for Respondent No.2.

WPSI Tejashree Thorat, Malvani Police Station, Mumbai,
present.

CORAM: N. J. JAMADAR, J.

DATED: 24th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This application for bail is preferred in POCSO Special Case No.533 of 2022 arising out of CR No.974 of 2021 registered with Malvani Police Station, Mumbai, for the offences punishable under Sections 363, 366A, 368 and 372(2)(n) of the Indian Penal Code, 1860 ("the Penal Code") and Sections 4, 5 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act").
3. Initially, the first informant lodged a report on 22nd June, 2021 to the effect that on the night intervening 21st and 22nd June, 2021 his daughter, who was then 17 years and 7

months of age had gone missing and he suspected that somebody had enticed her away.

4. Subsequently, it transpired that the victim was in relationship with the applicant. On 22nd June, 2021 the victim had gone to Bhopal. The applicant met her at Bhopal and initially took her to Delhi and then to Jaipur. They resided in a rented premises. The applicant allegedly had sexual relations with the victim by giving promises of marriage. It subsequently transpired that the applicant was already married and he had children. Eventually, the applicant was arrested. The victim was also brought to Mumbai.

5. The learned Counsel for the applicant submitted that in the intervening period the applicant and the victim had solemnized marriage after the victim attained majority. They have a son. The parties have now amicably resolved the dispute. The victim desires to continue to cohabit with the applicant.

6. The learned Counsel for respondent No.2 concurred with the submissions on behalf of the applicant. Two affidavits are filed. One, by the first informant and, other, by the victim. In the affidavit, the victim states that she had

solemnized marriage with the applicant and out of the said wedlock they have a son.

7. The learned APP resisted the prayer for bail. It was submitted that the applicant enticed the child despite being a married man. The applicant does not deserve the exercise of discretion.

8. I have perused the allegations in the FIR and the documents annexed with it. The material on record indicates that the victim was born on 21st November, 2023. On 22nd June, 2021, the victim had left the home on her own. There is material to indicate that the victim had boarded a train at Kurla, on her own, and had gone to Bhopal where the applicant joined her. *Prima facie* it appears that the victim had sufficient maturity of understanding to know the consequences. In the circumstances, the question as to whether the applicant had enticed away the victim, is a matter for adjudication at the trial.

9. Moreover, there is material to show that the victim and the applicant had solemnized the marriage and they have a son. In this backdrop, at this stage, the further detention of the applicant does not seem warranted.

10. In addition to the merits of the matter adverted to above, the affidavits of the first informant and the victim, indicate that the parties have resolved the dispute and the victim desires to continue the relationship with the applicant. Hence, I am inclined to exercise the discretion in favour of the applicant.

11. Thus, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant Idrees Ibrahim Khan be released on bail in POCSO Special Case No.533 of 2022 arising out of CR No.974 of 2021 registered with Malvani 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 not tamper with the prosecution evidence.
- (iv) 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.
- (v) The applicant shall regularly attend 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 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.]