



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2110 OF 2023**

Vijaykumar Jagprasad Singh
versus
State of Maharashtra and Anr.

... Applicant
... Respondents

Mr. Kushal Mor i/by Mr. Marmik Shah with Rohan Chauhan, for Applicant.
Mr. S.R.Agarwal, APP for State.
Ms. Payal Vardhan, for Respondent No.2.
Mr. Vinod Vasave, API, Worli Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 16 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.1304 of 2022 registered with Worli Police Station for the offences punishable under Sections 363, 354, 354D, 376, 376(3), 376D, 376DA, 342, 328 of the Indian Penal Code and Sections 4, 5, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, has preferred this application for bail.
3. The victim was 14 years and three months of age. On 25 December 2022, her father lodged a report with Worli Police Station to the effect that on 24 December 2022 at about 8.00 p.m., the victim left the home on the pretext of relieving herself at the public toilet. She did not return till late night. Despite search, she could not be located. Her father suspected that somebody had enticed her away. Hence, the

report of kidnapping a child from lawful guardianship. Thus, initially C.R.No.1304 of 2022 came to be registered for the offence punishable under Section 363 of IPC only.

4. On 26 December 2022, the victim was allegedly seen in the company of co-accused Vijankumar at Worli Naka. The mother and brother of the applicant went thereat and took the victim and co-accused Vinaykumar to Worli Police Station. The victim alleged that proximity developed between her and co-accused Vinaykumar. The latter had proposed to her. As her family members could not approve of the said liason, she left home on the pretext of going to bathroom and went to the house of co-accused Vinaykumar. Co-accused had allegedly inappropriately touched her and subjected her to sexual assault. The victim was taken for medical examination. The victim narrated the aforesaid incident.

5. On 28 December 2022, in a further statement, the victim alleged that the applicant as well as co-accused took her to the room of the applicant. Water was offered to her. After she drank the water, she felt giddiness. Co-accused gave her a cigarette to smoke. Thereupon, she lost consciousness. When she regained consciousness, she realized that she was sexually exploited. The victim alleged, co-accused again gave the same water to her. She again lost consciousness and the applicant and the co-accused again sexually exploited her.

6. On the next day, when she came out of the room of the applicant along with the co-accused Vinaykumar, the residents saw them and they took her to her

house. As she was scared and suffered from headache, she had narrated the incident which she could recollect. On the basis of the said statement, the applicant came to be arrested.

7. Mr. Mor, learned Counsel for the applicant submitted that the applicant was nowhere in the frame till first statement of the victim was recorded on 26 December 2022. Reconstructing the sequence of events, learned Counsel for the applicant, would urge that the allegations in the supplementary statement of the victim are inherently improbable. Even before the Medical Officer, the victim had narrated the very same version which she reported on 26 December 2022. There is no other material to connect the applicant with the alleged offences. Endeavour of the prosecution to rely upon the statements of the persons from whom the applicant had allegedly purchased liquor and cigarette does not advance the cause of the prosecution even at this stage, urged Mr. Mor.

8. Learned APP contested the prayer for bail. It was submitted that the victim was barely 14 years and three months of age. The allegations are of grave nature. The fact that the victim had not narrated the entire incident on 26 December 2022 cannot be construed in such a fashion so as to throw the entire prosecution case over-board. At this stage, according to the learned APP, the version of the victim deserves to be taken at par.

9. Ms. Vardhan, learned Counsel for Respondent No.2, also resisted the

prayer for bail. It was submitted that having regard to the nature of the accusation, and the punishment which the offences entail, the applicant does not deserve the exercise of discretion.

10. I have given careful consideration to the aforesaid submissions. I have recorded the versions of the victim in a little detail, on purpose. Evidently, the applicant came in the frame on 28 December 2022. In the statement of the victim recorded on 26 December 2022, the victim claimed to have gone to the house of co-accused Vinaykumar on her own. She stated that the co-accused inappropriately touched and kissed her. However, there was no penetrative sexual assault.

11. As noted above, in the statement recorded on 28 December 2022, the victim has narrated a different version implicating both the applicant and the co-accused by making allegations of aggravated penetrative sexual assault.

12. Is there any contemporaneous material which equips the Court to take a prima facie view of the matter ? The medico legal examination report of the victim on 26 December 2022 provided an opportunity to the victim to narrate the incident. Before the Medical Officer as well, the victim narrated the very incident as narrated before the police on 26 December 2022 implicating co-accused Vinaykumar only. Secondly, it is pertinent to note that both the mother and brother of the victim have stated that they were informed that the victim was seen in the company of a person at Worli Naka. They rushed to Worli Naka and found the victim with Vinaykumar, who

was preparing to flee away with the victim. Thirdly, there is a material discrepancy as regards the place of the occurrence. In the first version, the victim reported that she went to the house of the co-accused Vinaykumar, on her own, and she was molested by Vinaykumar in the said room and on the terrace of the building. In the statement recorded on 28 December 2022, the victim stated that she was taken away by the applicant and co-accused to the room of the applicant where she was allegedly exploited. The victim further stated that when she came out of the room, she was noticed by the neighbours and they took her to her home. This version is, prima facie, inconsistent with the statements of the mother and brother of the victim, who claimed to have found her at Worli Naka.

13. Learned APP made an endeavour to rely upon the statement of the victim recorded under Section 164 of the Code. I have carefully perused the said statement. First part of the statement recorded under Section 164 of the Code corresponds with the statement of the victim recorded on 26 December 2022 and the later two paragraphs are in tune with her version recorded on 28 December 2022 implicating the applicant. Prima facie, two versions are incompatible.

14. The alleged disclosure statement made by the applicant to point out the persons from whom he had purchased liquor and cigarette, in the facts of the case, prima facie, does not appear to be of incriminating nature.

15. The situation which thus obtains is that the victim had opportunities on

26 December 2022 to relate the incident before her parents, police as well as before the Medical Officer. The applicant was not at all implicated. It is significant to note that the Medical Officer opined that there were no fresh external injuries, but old healed tears.

16. In the totality of the circumstances, in my considered view, despite being fully mindful of the nature of the accusation, two versions of the victim being simply incompatible, a prima facie case can be said to have been made out in favour of the applicant.

17. The applicant is in custody since December 2022. Trial of the Special Case may take time. I am, thus, impelled to exercise the discretion in favour of the applicant.

18. Hence, the following order.

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Vijaykumar Jagprasad Singh be released on bail in C.R.No.1304 of 2022 registered with Worli Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall not enter the limits of Worli Police Station, except for marking his presence on the first Monday of every month in between 11 a.m. to

1.00 p.m., for a period of three years or till the conclusion of the trial whichever is earlier.

(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.)