

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO. 2111 OF 2023

Janu Mahadeo @ Mahadu Ghanekar ... Applicant
Versus
The State of Maharashtra and Anr. ... Respondents

Mr. Prabhanjay Dave a/w Mr. Ashray P. Dave, for the Applicant.
Mr. K. V. Saste, Addl.P.P., for the Respondent – State.
Mr. Arvind Aswani- appointed Advocate for Respondent No. 2.
Mr. Shekhar Pawar, PSI, Juhu Police Station, present.

CORAM : MANJUSHA DESHPANDE, J.

DATE : 26th MARCH 2024

P.C. :

1. By this application, the applicant is seeking bail under Section 439 of the Cr.P.C. in connection with C.R. No.82 of 2020, registered with Juhu Police Station, Mumbai, for the offences punishable under Sections 363, 376, 366(a), 354, 506 of the Indian Penal Code (IPC), 1860, and Sections 4, 8 and 12 of the Protection of Children From Sexual Offences, (POCSO) Act, 2012.

2. It is alleged that the applicant had taken the victim girl aged about 15 years, at 6:00 a.m. in the morning by local train to the Juhu

Chowpatty, by using threat and coercion. The applicant had taken the victim girl behind the big stones/boulders on the beach and committed forcible sexual act with her. The life guard, who was on duty at Chowpatty, after observing the same informed the concerned police station. Upon getting the information, the informant Police Head Constable arrived at the spot of occurrence and saw the applicant with the victim girl doing indecent act. The applicant was arrested on the spot of incident, i.e. on 22nd February 2020, since then he is in jail.

3. Learned counsel for the applicant submitted that, since the arrest of the applicant, he is in jail for more than four years. He has been falsely implicated in the present case, because of enmity between the applicant and the victim girl's family. They are neighbours residing at Tardeo, Mumbai. The relations between two families are strained, therefore, the applicant has been falsely implicated in the present case.

4. Learned APP has submitted that the statement of the victim girl has been recorded and she has stated that, the applicant had forcibly taken her to the Juhu Chowpatty and sexually abused her. The applicant was caught red handed by the informant on the Juhu Chowpatty, indulging

in indecent act with the victim girl. Therefore, there is no room for any doubt about the involvement of the accused. The applicant has been caught red handed in broad daylight. Hence, the learned APP has prayed for dismissal of the present bail application.

5. Learned counsel for the Respondent No. 2 has also submitted that the victim girl being of tender age of 15 years accompanied the applicant since she was threatened by him. Considering that the applicant is caught red handed in broad daylight doing indecent act in public, he does not deserve to be released on bail.

6. I have considered the arguments of the parties. Admittedly, the applicant is incarcerated in the jail for more than four years, and upon instructions, learned APP has informed that even the charges as yet have not been framed. Therefore, there is no likelihood of commencement of trial in the near future. *Prima facie*, the medical examination does not disclose that any sexual assault has been caused to the victim girl. So also the statement of the victim discloses that, when the victim was left her house in the morning while she was going to school but she was not in the uniform when she was found with the accused. When questioned

regarding change of her clothes, she has stated that she carries clothes for changing alongwith her to the school daily. Since after the school she attends the beauty parlour course. This answer of the victim creates a doubt whether she was forcibly taken. Be that as it may, this issue will have to be considered at the time of trial. The applicant is already in jail for more than four years and there is no likelihood of commencement of trial in the near future. The charge-sheet is filed and the investigation is also complete. The custody of the applicant is not needed. The trial will take its own time, till then the applicant would languish in the jail, without trial. In my opinion therefore it would be appropriate to enlarge the applicant on bail.

7. Considering the aforesaid, the application is allowed. The applicant is enlarged on bail on the following terms and condition:

:O R D E R:

- (i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount;

(ii) The Applicant shall attend the concerned police station on the 1st Saturday of every month between 10:00 a.m. to 11:00 a.m., till conclusion of trial.

(iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer of the concerned Police Station;

(iv) The Applicant shall cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(v) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witness or any person concerned with the case;

(vi) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail;

8. The Application is disposed of in the aforesaid terms.

9. It is made clear that observations made in this application are *prima facie* and those are confined to the present application.

10. All concerned to act on the authenticated copy of this order.

[MANJUSHA DESHPANDE, J.]