

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2379 OF 2023

Zakir Hussain Emamul Hassan	...Applicant
vs.	
The State of Maharashtra and Anr.	...Respondents

Ms. Roohita Shaikh i/b. Mr. Javed Shaikh and Mr. Anil Nile, for the Applicant.

Ms. G.P. Mulekar, APP, for the Respondent/State.

Mr. Gautam Modanwal, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 24 2024

P.C.:

1. The applicant who is arraigned in C.R. No.138 of 2023 registered with Shil Dighar police station for the offences punishable under sections 306 and 376(2)(n) of Indian Penal Code, 1860 and sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 seeks to be enlarged on bail.

2. The first informant is a native of Bihar. Mrs. 'S' is his cousin. She resides at Lily Building, Green Park Complex, Shilgaon, Post. Padale along with her husband and family members. The applicant is the brother in law of 'S'. Financial position of the first informant is very poor. The first informant had, thus, sent his daughter then 17 years and son 12 years of age to stay and study at the house of 'S' at Mumbai. The sister and brother duo were pursuing education in Mumbai.

3. On 5th April, 2023 the daughter (the deceased) spoke with the first informant and his wife and narrated that she was being subjected to sexual exploitation by the applicant and asked the first informant to come and fetch her. The first informant had no money and thus promised to come after few days. On 7th April, 2023 the first informant was apprised that the deceased died by suicide. The first informant came to Mumbai and lodged report leading to registration of C.R. No. 138 of 2023 for the offences punishable under sections 306 and 376(2)(n) of the Penal Code and sections 4, 6, 8, 10 and 12 of the POCSO Act, 2012.

4. Ms. Shaikh, learned counsel for the applicant, submitted that the applicant is an architect by profession. The applicant has been falsely roped in. The deceased and her brother were staying at the house of the brother of the applicant, together all the time. Thus, there was no occasion for the alleged sexual exploitation. It was submitted that there is not a shred of evidence to indicate that the applicant had exploited the deceased.

5. The learned APP stoutly resisted the prayer for bail. It was submitted that there is ample evidence to show that the deceased was subjected to sexual exploitation. The statement of the brother of the victim lends support to the allegations in the FIR. Therefore, the applicant does not deserve to be released on bail.

6. I have perused the report under section 173 of the Code and the documents annexed with it. The postmortem report indicates that the cause of the death was asphyxia due to hanging. However, in addition to the ligature mark, the autopsy surgeon noted that there were abrasion on the right and left groin region, two abrasions over lateral aspect of labia majora on right side, linear abrasion over left forearm, posterior aspect and contusion over right forearm. The medical officer further opined that based on gross external examination, genital region examination and anal region examination, there were signs suggestive of vaginal and anal penetration.

7. The statement of the brother of the victim indicates that on the day of occurrence after 'S' and her husband left home, the deceased was crying and told him that she was being offended against and when he inquired further initially she beat him and then told him that if she dies she would take him along. Thereafter, she went inside the room and shut the door. Later on he heard a loud cry, he rushed to the said room but the door was shut. He called the neighbour. When the door was opened, the deceased had hanged herself.

8. Prima facie, there is material to indicate that the deceased was subjected to sexual assault before she died by suicide. There

were marks of injuries on the person of the deceased which suggested that she was subjected to sexual assault. At this stage, in the backdrop of the medical evidence coupled with the attendant circumstances and the narration of the acts of sexual exploitation, at the hands of the applicant, a couple of days prior to the alleged occurrence, a strong prima facie case can be said to have been made out against the applicant.

9. I am, therefore, impelled to hold that this is not a fit case to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] 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.

(N. J. JAMADAR, J.)