

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2488 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Rakibul Deen Mohammad Khan @ Rakibul
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...Applicant

Versus

The State of Maharashtra and anr.

...Respondents

Mr. B. J. Shaikh, for the Applicant.

Ms. Ranjan Humane, APP for the State/Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED: 17th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant, who is arraigned in CR No.1116 of 2022 registered with Goregaon Police Station, Mumbai, for the offences punishable under Sections 376(2)(i) and 506 of the Indian Penal Code, 1860 ("the Penal Code") and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO Act") has preferred this application to enlarge him on bail.

3. The first informant, then 14 years and 6 months of age, was staying alongwith her parents and brother at a

construction site, where her father was working as a mason. The applicant, who also hails from the native place of the first informant, also worked as a mason at the said site and stayed on the first floor of the under construction building.

4. On 23rd December, 2022 at about 3.00 p.m. while the parents of the first informant (victim) had gone out for work and her brother had gone to school, the applicant allegedly came to her room and induced her to accompany him to the fifth floor of the construction site. The applicant allegedly forcibly removed inner wears of the victim and subjected the victim to aggravated penetrative sexual assault. Somehow the victim rescued herself and fearing that the applicant may again subject her to sexual exploitation as she was alone at home, the victim went to the house of her maternal uncle and narrated the incident to them. After the parents of the victim came thereat, they approached the police and the victim lodged the report.

5. Mr. Shaikh, the learned Counsel for the applicant, submitted that the applicant has been falsely roped in on account of the dispute between the applicant and the family members of the victim. Inviting the attention of the Court to the Medico-Legal examination report, the learned Counsel for

the applicant submitted that no case of penetrative sexual assault has been made out. Emphasis was laid on the fact that the Medical Officer did not find any external injuries on the person of the victim.

6. The learned APP resisted the prayer for bail. It was submitted that the applicant subjected the victim who was below 16 years of age to aggravated penetrative sexual assault and, thus, the offence would fall within the dragnet of sub-section (3) of Section 376 of the Penal Code and, therefore, the applicant does not deserve to be enlarged on bail.

7. I have carefully perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents annexed with it. *Prima facie* the allegations in the FIR find support in the statements of the parents and relatives of the first informant. The FIR came to be lodged immediately after the alleged occurrence. In the FIR, the victim narrated the circumstances in which the applicant subjected the victim to sexual assault. Even before the Medical Officer, the victim had narrated the manner in which the applicant allegedly subjected her to sexual assault. The history noted by the Medical Officer that the applicant could not succeed in penetrating cannot be read in isolation and

torn out of the context. At this stage, there is no reason to disbelieve the statement of the victim. The medical evidence *prima facie* lends credence to the allegations in the FIR.

8. Thus having regard to the age of the victim, the manner of alleged penetrative sexual assault, and the material which *prima facie* supports the allegations, I am not inclined to exercise discretion in favour of the applicant.

9. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) 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.]