

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

BAIL APPLICATION NO. 2637 OF 2023

Altaf Mohd. Babu Ansari.

...Applicant

VS.

The State of Maharashtra & Anr.

...Respondents

Mr. Akhlak Khan, Advocate for the Applicant.

Mr. S.R. Agarkar, APP for Respondent No. 1 State.

Mr. Sanjay Dubey i/b. Mr. Manoj Mishra, Advocate for Respondent No. 2.

PI Sunil Bile, Malavani Police Station, Mumbai.

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CORAM : N. J. JAMADAR, J.

DATE : MAY 6, 2024

P.C.:

1. Heard the learned counsel for the applicant, Learned Counsel for the Respondent No. 2 and the learned APP for the State.

2. This is an application for bail in Special Case No. 498 of 2022, arising out of C.R. No. 1023 of 2022 registered with Malvani Police Station for the offences punishable under sections 363, 366(A), 368, 376, 506, 377 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3. The victim, then 16 years of age, is the sister in law of the applicant. On 31st July, 2022, the victim had a quarrel with her brother. The victim was apprehensive that her brother would cause harm to her. Therefore, she went to the house of her sister, wife of the applicant. When the applicant was alone in the said house, the applicant sexually exploited the victim. The applicant threatened the victim not to disclose the incident to anybody, lest she would face dire consequences. On the next day, the applicant again took the victim to Hajiali Dargah, Mumbai. They spent about two days there. As the applicant left the victim near Kandivali, Mumbai on 4th August, 2022 the victim called her mother.

4. In the meanwhile, the mother of the victim had lodged a report with Malvani Police Station that somebody had enticed the victim away and the Crime was registered vide C.R. No. 1023 of 2022, for an offence punishable under section 363 of the Indian Penal Code. Upon the statement of the victim, offences punishable under section 366(A), 368, 376, 506, 377 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 came to be added.

5. Learned Counsel for the applicant submitted that the

applicant had been falsely roped in on account of family dispute. Before the Sessions Court, the mother of the victim had filed an affidavit and gave consent for granting bail to the applicant.

6. Learned APP resisted the prayer for bail. It was submitted that at the time of the alleged occurrence, the victim had barely completed 16 years of age. At this stage, there is no reason to disbelieve the version of the victim. Learned APP fairly submitted that in the statement of the victim recorded before the learned Magistrate under section 164 of the Code of Criminal Procedure, 1973, the victim has not supported the prosecution.

7. I have perused the statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973. The victim has stated that she had a quarrel with her brother and for fear of her safety, she had come to the house of the applicant and therefrom they had gone to Haji Ali Dargah and stayed there. The situation is that in her statement under section 164 of the Code, the victim has declined to support the prosecution version. I have perused the medico-legal examination certificate. The victim had narrated the history of sexual exploitation at the hands of the applicant. However, the victim stated that when they visited Haji Ali Dargah and stayed there.

There was no sexual assault.

8. In these circumstances, prima facie there is variance in the version of the victim. It could be urged that the victim might have been won over, during the intervening period. However, since the victim has not supported the prosecution version in her statement under section 164 of the Code and the applicant is in custody since 6th August, 2022, at this stage, further detention of the applicant appears unwarranted and, therefore, I am inclined to exercise discretion in favour of the applicant. Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Altaf Mohd. Babu Ansari be released on bail in C.R. No. 1023 of 2022 registered with Malvani Police Station in Spl. Case No. 498 of 2022, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Malvani Police Station on the first Monday of every alternate month between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant,

any of the prosecution witnesses or any person acquainted with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.

8] Application is disposed of.

(N. J. JAMADAR, J.)