

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2856 OF 2023

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2024.03.22
10:20:14 +0530

Sandipkumar Sukhanpal Singh

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Anjali Patil, a/w Tohid Shaikh, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent.

Mr. Vrushabh Savla, for Respondent No.2/Intervener.

PSI V. M. Khilare, Oshiwara Police Station, Mumbai.

CORAM: N. J. JAMADAR, J.

DATED: 20th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant, the learned APP for the State and the learned Counsel for the intervener – first informant.

2. This application for bail is preferred in CR No.1149 of 2022 registered with Oshiwara Police Station, Mumbai, for the offences punishable under Sections 376, 376(2)(n), 354(c), 500 and 506 of the Indian Penal Code, 1860 (“the Penal Code”) and Section 67(a) of the Information Technology Act, 2012.

3. The first informant is a 34 year old lady. While the first informant was working in a restaurant as a dancer, she

became acquainted with the applicant. Relationship developed. The first informant alleged, since 2015, the applicant had sexual relations with her by giving promise of marriage. The applicant compelled the first informant to make objectionable videos and share the same with the applicant. He also extorted a sum of Rs.22,00,000/- from the first informant. As the applicant demanded more amount, the first informant did not cave into the demands of the applicant and, thereupon, the applicant had sent the objectionable videos to the persons, who had known the first informant. Thus, the first informant lodged the report. The applicant came to be arrested on 25th July, 2022.

4. The learned Counsel for the applicant submitted that the applicant and the first informant were in a relationship since year 2015. As the relationship turned sour, the first informant lodged the report to wreak vengeance. Inviting the attention of the Court to the statements of the witnesses to whom the applicant, had allegedly sent the objectionable videos, the learned Counsel for the applicant submitted that those persons have disowned the said fact of circulation of the objectionable videos. Therefore, at this length of time,

according to the learned Counsel for the applicant, further detention of the applicant is unwarranted.

5. The learned APP invited the attention of the Court to the statements of the witnesses (pages 41 and 42) who have stated that the applicant had forwarded the objectionable content involving the first informant on their mobile phone. It was urged that those statements render corroboration to the version of the first informant in the FIR.

6. The learned Counsel for the intervener – first informant resisted the prayer for bail. It was submitted that the applicant despite being a married man had subjected the first informant to sexual exploitation and also exploited her adverse position to extract money from her. Therefore, the applicant does not deserve to be released on bail.

7. From the perusal of the allegations in the FIR itself, it becomes *prima facie* evident that the applicant and the first informant were in a relationship. The relationship lasted for more than seven years. The statements of witnesses also indicate that the persons who had known the first informant, were also aware about their relationship. The witnesses have stated that there were frequent quarrels between the applicant and the first informant. In the backdrop of the

situation in lives of the parties and the longstanding relationship, it would be prima facie difficult to draw an inference that the consent for sexual intercourse was given by the first informant under misconception of facts.

8. So far as the allegation of forwarding of the objectionable content, involving the first informant, to the witnesses, it appears that two of the witnesses have not subscribed to the prosecution version and two of the witnesses have stated that they did receive such content. It does not appear that the investigating officer has seized the mobile phone handsets of those witnesses, who have stated that they had received such content from the applicant. In the absence of such link evidence, the question of complicity of the applicant on the said count, appears contentious.

9. In any event, the applicant has been in custody since 25th July, 2022. Investigation is complete. Charge-sheet has been lodged. The applicant appears to have roots in the society. In the circumstances, further detention of the applicant, as an under-trial prisoner, does seem to be warranted. I am, therefore, inclined to release the applicant on bail.

10. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.1149 of 2022 registered with Oshiwara Police Station, Mumbai, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at the Oshiwara police station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not enter the limits of Jogeshwari Police Station till the conclusion of trial, except to attend the concerned police station on the scheduled dates.
- (v) The applicant shall not tamper with the prosecution evidence. The applicant shall not contact, directly or indirectly, or make any inducement, threat or promise to, the first informant or her relatives or to any person acquainted with the facts of the case so as to dissuade him/her 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 stands disposed.

[N. J. JAMADAR, J.]