



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3047 OF 2023**

Sayyed Yusuf Jamal Shamvil

... Applicant

versus

The State of Maharashtra and Anr.

... Respondents

Mr. Sandeep Kumar Singh, for Applicant.

Mrs. Ranjana Dinesh Humane, APP for State.

Mr. A.S.Hingane, for Respondent No.2.

CORAM: N.J.JAMADAR, J.

DATE : 2 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.59 of 2021 registered with Nagpada Police Station for the offences punishable under Sections 328, 376, 376(2)(n), 377, 383, 384, 406, 420, 506, 351 and 212 read with Section 34 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, Section 67 of the Information Technology Act, 2000 and Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and Aghori Practices and Black Magic Act, 2013 has preferred this application to enlarge him on bail.
3. First informant – Respondent No.2 is a 41 year old lady. She is a medical practitioner by profession. She has a 14 year old daughter (victim) and 12 year old son. She had obtained divorce from her quondam husband. In the month of September 2014, she became acquainted with the applicant through a common friend. The

applicant developed rapport with the first informant.

4. The first informant alleged, on 5 November 2014, the applicant called her at his residence on the pretext that his son was ill. After she treated the son of the applicant, accused No.2 – the wife of the applicant offered juice to the first informant. The first informant alleged, she woke up after one and half hours and found her dupatta kept at a distance. On 6 November 2014, the applicant came to the first informant's clinic and showed her photographs and videos on the mobile phone of the applicant. Those photographs and videos showed the first informant in an objectional position and also having intercourse with the applicant. The first informant alleged, by giving threats of making those photographs and videos viral, the applicant extorted huge amounts from the first informant and sexually exploited her repetitively. The applicant allegedly made the first informant accompany him to various hotels and had forcible sexual intercourse with her. The applicant also divested the first informant of her cars, jewellery and valuables.

5. It is further alleged, when the first informant paid no heed to the threats of the applicant, the latter contacted the sister of the first informant who is also a medical practitioner, and, by showing objectionable photographs and videos of the first informant, extorted an amount of Rs.1 Crore and 1 kg. Gold from the sister of the first informant. The applicant had allegedly threatened to plant drugs in the clinic of the first informant and her sister. First informant alleged that the applicant after extorting

a sum of Rs.1.5 Crores, 400 gms gold and three cars from the first informant and a sum of Rs.1 Crore, 1 kg gold from the sister of the first informant, blocked off the first informant and, therefore, she lodged a complaint in writing with the police on 31 December 2020.

6. FIR came to be registered on 21 March 2021. During the course of investigation, supplementary statements of the first informant were recorded. In the supplementary statement recorded on 27 May 2021, the first informant alleged that the applicant subjected her 12 year old daughter to sexual assault and sexual harassment. It was, inter alia, alleged that the applicant used to send sexually explicit messages to the victim and had once attempted sexual assault on the victim at a room in Hotel "Taj Lands End". The statements of witnesses, including the victim and the sister of the first informant were recorded. The applicant came to be arrested on 25 January 2022. Pursuant to the discovery made by the applicant, RC books and the cars were recovered. Post completion of investigation, chargesheet came to be lodged.

7. Mr. Singh, learned Counsel for the applicant, urged with a degree of vehemence that the falsity of the allegations in the FIR is borne out by the very allegations in the FIR. First incident of the alleged sexual exploitation of the first informant occurred in the year 2014. FIR came to be lodged in the year 2021. This delay itself dismantles the prosecution case. It was further submitted that the first informant and the applicant were, as is evident, in a consensual relationship for over

six years. As the relationship turned sour, the applicant came to be falsely implicated. Laying emphasis on the fact that to meet the case that the relationship apparently seems consensual, by way of after thought, false allegations of sexual exploitation of the victim were made so as to falsely implicate the applicant for the offences under Sections 8 and 12 of the Act, 2012. It was urged that the allegations of sexual exploitation of a grown up lady with two children for over six years are inherently improbable.

8. Mrs. Humane, learned APP, opposed the prayer for bail. It was submitted that it is not a case of sexual exploitation of a woman by giving promises, but one of systematic physical, financial and emotional exploitation by resorting to various dubious practices and administering threats. Therefore, the applicant does not deserve to be enlarged on bail.

9. Mr. Hingane, learned Counsel for the Intervener, also stoutly opposed the prayer for bail. It was urged that by putting the first informant in constant fear of the defaming her and by practicing black magic and exerting religious influence, by claiming to possess supernatural power, the applicant had, in fact, robbed the first informant of a huge amount, valuables and cars. The applicant has even not spared the victim, a 12 year old girl. Such being the gravity of the offences, the applicant does not deserve to be enlarged on bail. It was further submitted that the applicant and his wife were absconding for about six months. They were arrested from Kolkata. In the

event, the applicant is released on bail, there is a very strong possibility of fleeing away from justice and also threatening the first informant, victim and the witnesses who are in a vulnerable position.

10. I have perused the material on record carefully and also given anxious consideration to the submissions canvassed across the bar. First and foremost, the situation in life of the parties, deserves to be kept in view. The first informant is a qualified and experienced medical professional. In the year 2014, when the first incident allegedly occurred, she was a divorcee with two children. The first incident allegedly occurred at the house of the applicant and in the presence of his wife and son. Prima facie, first informant was aware that the applicant was a married person. It is the case of the first informant that on 6 November 2014, the applicant had shown objectionable photos and videos involving the applicant and the first informant and demanded extortion of Rs.2 Crores. Thereafter, the applicant continued to extort money and valuables from the first informant and sexually exploited her over the years.

11. In contrast, the Whatsapp chats between the applicant and the first informant, over a period of time, even in proximity to the lodging of the FIR, to which the attention of the Court was invited by the learned Counsel for the Applicant, prima facie, indicate that the applicant and the first informant were in a relationship. One gets an impression that the first informant repeatedly called the applicant at her place. It may not be justifiable to delve deep into the nature of the relationship at this stage.

However, it must be noted that the chats lend support to the claim of the applicant that the relationship was consensual.

12. The aspect of delay deserves to be considered in this context. The first incident of alleged sexual exploitation occurred on 5 November 2014; followed by demand of extortion allegedly on 6 November 2014. In the backdrop of the situation in life of the first informant, adverted to above, it would be rather difficult to readily accede to the explanation that on account of the threats given by the applicant of making the photos and videos viral, the first informant continued to suffer exploitation for over six years. The first informant had the maturity of understanding to know the nature and quality of the acts to which she was consenting to and the price the relationship was allegedly extracting. The aspect of delay, therefore, assumes significance while considering the prayer for bail.

13. As regards the allegations of sexual assault and sexual exploitation of the victim, it is necessary to note in the written complaint, though it was alleged that the applicant talked ill about the victim and harboured the desire to exploit her, the allegations of sexual assault and exploitation of the victim were not made. Nor in the FIR, such allegations were made. After a period of about 4-5 months, such allegations surfaced. Therefore, the veracity and reliability of the allegations of sexual assault and exploitation of the victim, would be a matter for adjudication at the trial.

14. The applicant has been in custody for more than two years. Investigation

is complete for all intent and purpose. In the backdrop of the probabilities of the case, coupled with the material prima facie showcasing a consensual relationship between the parties, and an inordinate delay in lodging the FIR, a prima facie case is made out for exercise of discretion in favour of the applicant.

15. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Sayyed Yusuf Jamal Shamvil be released on bail in C.R.No.59 of 2021 registered with Nagpada Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before Nagpada Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not contact the first informant, victim, any of the relatives of the first informant in any manner and for any purpose whatsoever and shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him 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 disposed.

(N.J.JAMADAR, J.)