

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3136 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Raman Babarao Baddalwar ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Pramod Kumbhar, a/w Mittali Solanki, for the Applicant.
Mr. S. R. Aagarkar, APP for the State/Respondent.
PSI R. N. Loke, Sakinaka Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 6th FEBRUARY, 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.1812 of 2022 registered with Sakinaka Police Station, Mumbai, for the offences punishable under Sections 354, 354A, 354B, 506(2), 376 and 341 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.
3. The first informant, a 19 year old girl, had left her home on 23rd July, 2022 at about 11.30 am. as her parents had refused to solemnize her marriage with the boy, whom she was in a relationship with. At about 9.30 pm. she sat on a bench at CSTM Railway Station. At about 10.30 pm., the

applicant approached the first informant. The applicant made the first informant repose confidence in him by stating that his parents were staying with him. The applicant took her to his room at Sakinaka. Nobody was at the home of the applicant.

4. After a while, the first informant alleged, the applicant grabbed the first informant and tried to disrobe her. The applicant kissed and inappropriately touched the first informant. He tried to force the first informant to allow him to have sexual intercourse. When the first informant started crying loudly, the applicant stopped molesting the first informant.

5. On 24th July, 2022 at about 1.30 am. the first informant came out of the applicant's house and apprised the said incident to the persons, who were present on the main road. Thereupon the applicant was apprehended and handed over to the police.

6. The learned Counsel for the applicant submitted that from the perusal of the material on record especially the Medico-Legal Examination Report and the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code") it becomes abundantly clear

that an offence punishable under Section 376 of the Penal Code is not *prima facie* made out. The applicant has been in custody since 24th July, 2022. Investigation is complete. Charge-sheet has been lodged. Further detention of the applicant is thus not warranted.

7. The learned APP resisted the prayer for bail. It was submitted that the applicant had molested the first informant taking undue advantage of the situation that she had ran away from her home, under the pretext of giving shelter to her. The learned APP made an endeavour to draw home the point that the allegations in the FIR indicate that the applicant did attempt to commit rape. Therefore, the applicant does not deserve to be enlarged on bail.

8. To ascertain as to whether a *prima facie* case for the offence punishable under Section 376 of the Penal Code was made out, the learned APP was directed to place a copy of the Medico-Legal Examination Report of the victim especially the narration by victim before the Medical Officer. Today, the learned APP has tendered a copy of the Medico-Legal Report. The Medical Officer has *inter alia* recorded that there was no history of sexual intercourse.

9. The statement of the victim recorded under Section 164 of the Code also indicates that the victim stated that at the time of the occurrence the applicant allegedly forced her allow him to have sexual intercourse. However, she resisted and started crying loudly. Thereupon, the applicant stopped molesting her. In the statement recorded under Section 164 of the Code, the victim did not narrate that the applicant had forced himself upon her and had forcible sexual intercourse or did attempt to have sexual intercourse.

10. In the aforesaid view of the matter, though there is material to indicate that the applicant had outraged the modesty of the victim and subjected her to sexual harassment and used criminal force with intent to disrobe her, yet, the allegations *prima facie* do not make out an offence punishable under Section 376 of the Penal Code. The offence punishable under Section 354-A entails punishment which may extend to three years and the offence punishable under Section 354-B provides for punishment which may extend to seven years; with a minimum term of three years. The applicant has been in custody for more than one and half year.

11. Investigation is complete for all intent and purpose. Charge-sheet has been lodged. In the circumstances of the case, the further detention of the applicant does not seem warranted.

12. I am, therefore, inclined to exercise the discretion in favour of the applicant.

13. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.1812 of 2022 registered with Sakinaka Police Station, Mumbai, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at Sakinaka Police Station on the first Monday of every month between 10.00 am. to 12.00 noon for a period of two years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not contact the victim, any of her relative or any person acquainted with the facts of the case for any reason 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 stands disposed.

[N. J. JAMADAR, J.]