IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3283 OF 2023

Biju Ibrahim Sakariah ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

Mr. Vishal Kasbekar i/by Mr. P.V. Dhopatkar, for Applicant.
Mr. S.R.Aagarkar, APP for State.
Mr. D.S.Manerkar i/by Mr. A.S.Hingane, for Intervener.

CORAM: N.J.JAMADAR, J.

DATE : 18 MARCH 2024

P.C.

1. The applicant who is arraigned in C.R.No.1025 of 2022 registered with Vakola Police Station for the offences punishable under Sections 376, 377, 420, 323, 504, 506 of Indian Penal Code, has preferred this application to enlarge him on bail.

2. The first informant, a 31 year old lady, is a divorcee with three children. She is engaged in the business of imitation jewellery. In the month of March 2022, she became acquainted with the applicant in a Casino at Goa. The applicant represented that he was a pilot and was engaged in the business of labour supply at Dubai. They exchanged mobile numbers. In the month of July 2022, the applicant called the first informant at Goa. The applicant allegedly induced the first informant to pay a sum of Rs.20 Lakhs to invest in his alleged business. The applicant also gave a proposal of marriage. The first informant accepted the said proposal. On 22 July

2022, the applicant and the first informant returned to Mumbai.

3. The first informant alleges, on the night intervening 22nd and 23rd July 2022, the applicant had forcible sexual intercourse with her in a car, after they left hotel Toy Pub. Thereafter, the applicant repetitively sexually exploited her and also subjected her to forcible intercourse against the order of nature, without her consent. The applicant allegedly made the first informant to transfer huge amounts in cash and through banking channels. She was made to pledge gold with IIFL and raise a sum of Rs.25 Lakhs. Out of the said amount, Rs.20 Lakhs was transferred to the account of the applicant through banking channel. By threatening the first informant to upload the photos and videos of the first informant, the applicant allegedly detained the first informant at Fidoligo hotel at Goa and sexually exploited her. The applicant also abused and physically assaulted the first informant. During the period 22 July 2022 to 22 September 2022, the applicant allegedly had forcible sexual intercourse with the first informant by giving false promise of marriage and made the first informant to part with a sum of Rs.3.07 Crores Thereafter, the applicant started to distance himself. When the first informant went in search of the applicant at Bangalore, it transpired that he was already married. Hence, the first informant lodged a report.

4. Learned Counsel for the Applicant submitted that the first informant and the applicant met at a casino at Goa. The money which the first informant claimed to have paid and/or transferred to the applicant, was in fact, used by the first

informant to play in the casino. As the first informant lost money in the casino, she started to demand return of the amount and to coerce the applicant to meet the said demand, she has lodged a false report.

5. Learned Counsel for the Applicant submitted that apprehending that the first informant may implicate the applicant in a false case, on 15 January 2023 itself, the applicant had lodged a report / complaint at Panaji Police Station, Goa. It was further submitted that the allegations of sexual exploitation are inherently improbable. At best, it was a case of a consensual relationship. The Investigation Officer has not recorded the statements of any independent witness and the entire prosecution case rests on the testimony of the first informant, whose version may not command reliance. Therefore, the applicant deserves to be enlarged on bail.

6. Learned APP resisted the prayer for bail. It was submitted that the applicant had exploited the first informant sexually, physically and financially. The allegation of the first informant that she had transferred huge amounts to the account of the applicant are borne out by the extracts of the bank accounts. Thus, the applicant does not deserve to be released on bail.

7. Learned Counsel for the first informant also resisted the prayer for bail. Taking the Court through the extract of the bank accounts which indicate that the huge money was transferred to the accounts of the applicant, it was submitted that the applicant has deceived the first informant in a systematic manner. It was submitted

that the first informant would not have given consent for the sexual intercourse, even initially, but for the false representation made by the applicant. Therefore, the offence punishable under Section 376 of IPC can be said to have been prima facie made out. Hence, the applicant may not be released on bail.

8. At this stage, it is necessary to note that to meet the case of the prosecution that the huge amount was transferred to the account of the applicant, it was submitted on behalf of the applicant that only a sum of Rs.85 Lakhs was credited to the account of the applicant. And without prejudice to the rights and contentions of the applicant that the said amount was paid for playing in the casino, the applicant was willing to deposit the said amount in Court. Thus, on 2 March 2024, an additional affidavit was filed by the applicant to the effect that he had received a sum of Rs.85,06,501/- as per the chargesheet and he was willing to deposit Rs.5 Lakhs on the day he is released on bail and the balance amount in monthly installments of Rs.1 Lakh. The said amount was offered to be deposited to prove the bonafide of the applicant.

9. With regard to the said affidavit, Mr. Kasbekar, learned Counsel for the Applicant submitted that the Court cannot impose a condition of deposit of the amount while releasing the accused on bail. Reliance was placed on the decision of the Supreme Court in the case of **Ramesh Kumar V/s. The State of NCT of Delhi**[1].

1 AIR 2023 SC 3484

Mr. Kasbekar further submitted that whether the applicant owes any amount to the first informant cannot be delved into while deciding the bail application. To this end, reliance was placed on the decision of the Supreme Court in the case of **Mahesh Chandra V/s. State of U.P.**[2] It was urged that the first informant being a grown up lady with three children cannot be said to have been under misconception of fact when she allegedly gave consent for sexual intercourse. Reliance was placed on a decision of the Supreme Court in the case of **XXXX V/s. State of Madhya Pradesh and Anr.**[3]

10. I have carefully considered the material on record and the submissions canvassed across the bar. To begin with, it is necessary to note the situation in the lives of the parties. The first informant was a divorcee with three children. The first informant claimed, the applicant after they became acquainted, gave a promise to marry her. Thereafter, the applicant exploited her. The first informant alleges, when the application started to avoid her, she went to his place at Bangalore and, at that time, it was revealed that the applicant was already married.

11. Such being the situation in life of the parties, normally an inference would be justifiable that the prosecutorix being a grown up woman with three children was mature and intelligent enough to understand the significance and the consequences of the moral or immoral quality of the act she was consenting to. However, in the facts of the case, the allegations cannot be jettisoned away on the

2 (2006) 6 SCC 196
3 Criminal Appeal No.3431 of 2023

premise that, at best, it was a case of physical relations between the two consenting adults. Few concomitant factors, in my considered view, deserve to be taken into account.

12. First, the alleged relationship lasted for 4 to 5 months only. The first informant claimed that she became acquainted with the applicant in the month of March 2022. At the instance of the applicant, she went to Goa in the month of July 2022 and the relationship lasted till September 2022. Second, the financial transactions between the first informant and the applicant. There is material to indicate that the first informant and the applicant both operated multiple accounts. The extracts of the accounts evidence the fact that the amounts were transferred to the accounts of the applicant and one Rekha Johnson from the account of the first informant, continuously. It further appears that from the account of Rekha Johnson, the extract of which also forms part of the record, the amounts were transferred to the account of the applicant.

13. The first informant claimed that she was induced to part with a sum of Rs.3,07,00,000/-. At this stage, the court may not delve into the aspect of the exact quantum of the amount allegedly transferred and/or paid by the first informant to the applicant. What is of material significance is the fact that the applicant himself has annexed the statements, which indicate that from the account maintained by the first informant with ICICI Bank and Yes Bank, an amount to the tune of Rs.1,00,49,001/-

was transferred to the account of the applicant maintained with Federal Bank, and the applicant claimed to have repaid a sum of Rs.15,42,500/- and net amount payable to the first informant was Rs.85,06,501/-. The said amount appeared to have been transferred to the accounts of the applicant from the accounts of the first informant during the period July 2022 to September 2022.

14. An endeavour was made on behalf of the applicant to urge that the said amount was transferred to the account of the applicant as the latter had access to a particular enclosure in the Casino and to facilitate the first informant to play in the Casino. The applicant also annexed a chart (Exhibit D) indicating that during the period 18 July 2022 to 29 September 2022, a sum of Rs.1,01,16,000/- was transferred from the account of the first informant to the account of the applicant and the said amount was used to play in the Casino. Prima facie, credit of the huge amount to the accounts of the applicant is substantiated by documents of unimpeachable character and even the applicant does not dispute the same. The end use of the amount is a matter of defence of accused.

15. In the context of the aforesaid material, a submission was sought to be canvassed that the prosecution cannot be converted into a process for recovery of money. There can be no quarrel with the proposition enunciated by the Supreme Court in the case of **Ramesh Kumar (supra).** However, the allegations in the instant case, are required to be appraised as a whole. Prima facie, it appears that the applicant

exploited the situation in the life of the first informant, physically, emotionally and financially. In a short period of three odd months, the first informant was induced to part with huge amounts and the applicant allegedly distanced himself from the first informant after having sexually, physically and financially exploited her. It does not seem to be a case where the parties were in a romantic relationship, and, thereafter, there was a fall out. The acts and conduct of the applicant in inducing the first informant to give consent for the sexual relations and, thereafter, extracting huge amount by exploiting her position, may, prima facie, justify an inference that the alleged initial promise to enter into a martial bond was dishonest.

16. At this stage, I do not find any reason to disbelieve the version of the first informant that she was subjected to sexual exploitation. The submission sought to be canvassed on behalf of the applicant that there is no independent witness to the alleged acts of sexual exploitation, at this stage, does not merit consideration.

17. In the totality of the circumstances, in my considered view, this is not a fit case to exercise the discretion in favour of the applicant.

18. Hence, the following order :

ORDER

(i) The 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.)