

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3280 OF 2023

Urmila Chotelal Vishwakarma ...Applicant

vs.

The State of Maharashtra and Another ...Respondents

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SUBHASH
PAREKAR

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Mr. Kiran Varma, for the Applicant.

Ms. Aishwarya Kantawala, for the victim/Respondent No. 2.

Ms. Ranjana Humane, APP, for the Respondent/State.

Mr. Sachin Tambe, PSI, MIDC, Mumbai.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 18, 2024

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant, who is arraigned in C.R. No. 508 of 2019 registered with MIDC police station for the offences punishable under sections 363, 376(2)(n) and 506 of Indian Penal Code, 1860 and sections 6 and 10 of the Protection of Children of Sexual Offences Act, 2012 (the Act, 2012) has preferred this application to enlarge her on bail.

3. The first informant who is the father of the child lodged a report on 9th November, 2019 that the girl child who was about 17 years of age (born on 30th November, 2002) was missing from home since 2 pm and he suspected that somebody might have enticed her away. On 11th November, 2019 the victim was brought to the police

station. The victim stated that on 9th November, 2019 she had left home as her mother had scolded her. She had carried gold ornaments and cash of Rs. 1,000/-.

4. On 15th November, 2019 a statement of the mother of the victim was recorded. The mother stated that the victim narrated to her that two years ago, Sulab Yadav (accused No. 1) had sexually exploited her. The victim had narrated various incidents of sexual exploitation by Sulab (accused No. 1). In the supplementary statement, the first informant also stated that the victim narrated that Sulab (accused No. 1) had been sexually exploiting her.

5. It appears that the statement of the victim was recorded before the learned Magistrate under section 164 of the Code of Criminal Procedure, 1973 on 15th February, 2020. In the said statement, allegations were made against the applicant. The victim, inter alia, alleged that she had narrated the acts of sexual exploitation to the applicant. However, the applicant did not take any action and instead divested the victim of the money which was given by accused No. 1 to the victim. The applicant allegedly induced the victim to extract as much money as possible from the accused No. 1. The applicant also facilitated the sexual exploitation

of the victim by two boys whom the victim has known as Pandit and Tarun. The applicant gave some intoxicant substance to the victim and inserted object into the private part of the victim. The applicant had sold gold ornaments which the victim had brought from her home and the applicant had also facilitated the travel of the victim to Hyderabad and her stay at various places.

6. It would be contextually relevant to note that while rejecting the bail application of Sulab (accused No. 1), this Court observed that the allegations made against the applicant in the 164 statement of the victim warranted effective custodial interrogation of the person named therein. Thereupon, the applicant was arrested on 25th August, 2022.

7. Mr. Verma, the learned counsel for the applicant, submitted that the applicant has been falsely roped in on account of animosity between the parties. Initially, the applicant was shown as a witness in the crime in which the applicant came to be arrested in the year 2019 itself. Mr. Verma invited the attention of the Court to the initial submissions of the victim and her parents as well as the medico legal examination report of the victim. In none of those statements and reports any role was attributed to the applicant. It

is only in the 164 statement of the victim that allegations of sexual exploitation were made against the applicant.

8. The learned APP and Ms. Kantawala, learned counsel appointed to espouse the cause of the victim, stoutly resisted the prayer for bail. It was submitted that the victim has vividly described the manner in which the applicant had further exploited her when she narrated the incident of sexual exploitation at the hands of the accused No. 1. Attention of the Court was invited to the statement of Lokesh Mehta, the jeweler, with whom the applicant had pledged the gold ornaments which the victim had brought from her home.

9. I have perused the material on record. The victim as is evident has levelled two pronged allegations of exploitation. First, the victim has alleged that she was subjected to sexual exploitation by accused No. 1. Second, the victim alleges she was on visiting terms with the applicant and she had confided in the applicant about her ordeal and thereupon the applicant had also exploited her. If the initial statements of the victim and the first informant are considered, it appears that no allegations of sexual exploitation were made even against accused No. 1. It is in the statement of the

mother of the victim recorded on 15th November, 2019, it was stated that the victim had disclosed that she was exploited by Sulabh.

10. It would be contextually relevant to note that in the medico-legal examination of the victim conducted on 12th November, 2019, the victim had stated that accused No. 1 Sulab Yadav subjected her to sexual assault and penetrative sexual assault over a period of time. She further stated that when she narrated the incident to her parents, they did not believe her and take any action. Thus, she ran away to Hyderabad.

11. The allegation against the applicant seems to have been made in the statement recorded under section 164 of the Code before the learned Magistrate on 15th February, 2020, after about three months after lodging of the report. Prima facie as the victim was almost 17 years of age, the failure to name the applicant as the person who exploited her as well as the two boys who allegedly subjected her to penetrative sexual assault in the house of the applicant, cannot be brushed aside as immaterial and inconsequential. In the statement of the victim under section 164 of the Code, those two boys were simply named as Pandit and Tarun. It does not appear that, during the course of investigation, the

investigating agency could collect material to substantiate the aforesaid accusation.

12. However, a fact which incriminates the applicant is the statement of the jeweler with whom applicant had pledged the gold ornaments. It is also relevant to note that before the applicant was arrested, she had stated before the police that she had assisted the victim in pledging the gold ornaments with the jeweler, as the latter was not ready to advance money to the victim since she was a minor. However, whether the said act could be construed to implicate the applicant for the offences punishable under the Act, 2012 would be a matter for trial.

13. In the backdrop of the aforesaid nature of the accusations, qua the applicant, and the aspect of delay, as well as the probabilities of the case, in my view, a prima facie case to exercise discretion in favour of the applicant is made out. The applicant is a woman. She appears to have roots in society. The trial has already commenced. The evidence of the victim has already been recorded. Therefore, at this stage, the possibility of tampering with evidence and threatening witnesses appears remote.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Urmila Chotelal Vishwakarma be released on bail in C.R. No.508 of 2019 registered with MIDC police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark her presence at MIDC police station on the first Monday of every month in 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 her 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.

Application disposed.

(N. J. JAMADAR, J.)