

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3321 OF 2023

Sureshprasad Shyamapati Singh
@ Suresh Shyamapati Singh

...Applicant

vs.

The State of Maharashtra and Another

...Respondents

Mr. Bablu Shaikh, for the Applicant.

Mr. Tanveer Khan, APP, for the Respondent/State.

Mr. Amanjhot Anand i/b. M/s. H.S. Anand & Associates, for
Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : MAY 02, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. Mr. Amanjhot Anand, learned counsel submits that he has instructions to appear on behalf of respondent No. 2, who appeared before the Court through video conferencing. The learned counsel undertakes to file vakalatnama on behalf of respondent No. 2.
3. In view of above statement, Mr. Tanmay Vispute, learned counsel who was appointed to espouse the cause of respondent No. 2 stands discharged.
4. Mr. Amanjhot Anand shall file vakalatnama on behalf of respondent No. 2 within a period of two weeks from today.
5. The applicant, who is arraigned in C.R. No. 193 of 2023 registered with Malvani police station for the offences punishable

under sections 363, 366A, 368, 376, 376(2)(n) and 376(3) of Penal Code, 1860 and sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 seeks to be enlarged on bail.

6. The victim, who was 17 years and 9 months of age, on the date of the lodging of the FIR, had become acquainted with the applicant since prior to three years. She was working in the Imitation Jewellery factory of the applicant. The victim was residing near the house of the applicant, who was residing along with his wife and four children.

7. The first informant alleged the victim enticed her by stating that he was in love with the victim and would marry her. Prior to two years of the lodging of the report, the applicant allegedly took the victim to the lodge and had forcible sexual intercourse despite her resistance. After a month thereof, the applicant again sexually exploited the victim. Since then till the month of May, 2023, the applicant repetitively sexually exploited the victim. There was exchange of messages between the applicant and the victim. Eventually, on 8th February, 2023, the applicant took the victim to Ambojwadi and kept her in a room. To allay suspicion, the applicant put vermilion on the forehead of the victim, made her wear a marriage-string and declared that she was his wife. The applicant allegedly sexually exploited the victim in the said room. Ultimately,

the police rescued the victim from the said room.

8. Mr. Shaikh, the learned counsel for the applicant, submitted that there are material discrepancies in the statement of the victim before the police, medical officer and learned Magistrate. In her statement, before the learned Magistrate under section 164 of the Code of Criminal Procedure, 1973 (the Code), the victim has given the version which is at variance with her statement recorded under section 161 of the Code. In the history narrated before the Medical Officer, the victim did not state that the applicant had forcible sexual intercourse with her. On the contrary, material on record would indicate that the victim and the applicant were friends. As the applicant has been in custody for more than a year and investigation is complete, the applicant deserves to be enlarged on bail.

9. In opposition to this, Mr. Khan, learned APP and Mr. Anand, learned counsel for respondent No. 2, stoutly resisted the prayer for bail. It was submitted that the applicant who was 45 years of age, with four children, enticed away the victim who was then hardly 16 years of age and subjected her to sexual exploitation. The situation in life of the parties was such that the applicant could not have solemnized marriage with the victim, on the promise of which the applicant exploited the victim. Moreover, the act of kidnapping

away the victim from the lawful guardianship and keeping her in a room at Ambojwadi and thereafter repetitively exploiting her aggravates the offence. Thus, the applicant does not deserve to be enlarged on bail.

10. I do not find much substance in the submission of Mr. Shaikh that there is irreconcilable inconsistency in the statement of the victim recorded before the police under section 161 of the Code and before the learned Magistrate under section 164 of the Code. The victim has consistently stated that the applicant had penetrative sexual intercourse with her on umpteen times. As the victim was a child, the aspect of consent was wholly irrelevant.

11. It is in this context, the situation in life of the parties, assumes critical salience. The applicant was much married man with four children. The victim was about 16 years of age. The very document placed on record by the applicant indicates that the relationship between the parties transcended friendship. Moreover, the victim was working in the Imitation Jewellery factory run by the applicant. I find substance in the submission of Mr. Anand that the applicant abused his domineering position to subject the child to aggravated penetrative sexual assault.

12. Endeavour on the part of the applicant to draw home the point that the statements of the manager of the lodge do not

indicate that the applicant and the victim had visited the said lodge, as alleged, and the statement of the owner of the premises wherein the applicant had allegedly kept the victim, does not support the prosecution fully, does not merit countenance at this stage.

13. Prima facie, there is adequate material to indicate that the applicant had repetitively sexually exploited the victim. At this stage, there is no justifiable reason to discard the version of the victim, which appears consistent on the material points.

Hence, the following order.

ORDER

1] The application stands rejected.

2] 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.)