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Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3261 OF 2022

Prakash Dadarao Suryavanshi

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

.....

Mr. Jigar Agarwal a/w Mr. Afsar Ansari for the applicant

Mr. M.G. Patil, APP for the respondent – State

Mr. I.A. Khan a/w N.J. Khan for respondent no.2

Mr. Ajay Lingnarkar, PI, EOW Mumbai present

Mr. Ghag, PSI, Malvani Police Station, Mumbai present

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 15th JANUARY, 2024

P.C.

1. After having heard learned Counsel for the applicant for some time when this Court expressed disinclination to grant bail, learned Counsel for the applicant seeks time to take instructions.

2. Hence, the matter was kept back at 2.30 p.m.

3. Again called out at 2.45 p.m.

4. Heard learned Counsel for the applicant and the learned APP for the respondent – State.

5. By this application under Section 439 of the Cr.P.C. the applicant prays for his release on bail, who is prosecuted by Malwani Police Station for the offences punishable under Sections 376, 376(3), 377, 354 of the Indian Penal Code r/w Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, (for short POCSO Act).

6. In short, it is the case of the prosecution that the applicant and the first informant, who is the mother of the victim were in live in relationship. On 10th March 2022, around 7.45 p.m. when the informant woke up from her sleep around midnight to go to the washroom, she noticed the applicant who was present in the bed room put his private part in her daughter's mouth and moved his hands over the body and pressed her breast. The first informant made a hue and cry, upon which the applicant – accused scolded her. Subsequently, a report came to be lodged against the applicant as above. After investigation, a charge-sheet was filed.

7. Learned Counsel for the applicant at the outset, would argue

that the applicant has been falsely implicated by the first informant owing to the civil dispute between him and the first informant. In order to buttress his contention, he invited my attention to a copy of plaint filed in the Court at Dindoshi, Borivali by one Dinesh Yadav against the first informant, which has nothing to do with the applicant. It is contended that the applicant and the respondent have exchanged their bungalows bearing Bungalow No.9 and 10 and on account of that also there is a civil dispute, due to which the applicant came to be implicated falsely by the first informant.

8. Learned APP, on the other hand, strongly opposed release of the applicant looking to the nature of evidence and the seriousness of the offence. My attention is invited to the statement of the first informant recorded by the Metropolitan Magistrate, 10th Court, Andheri under Section 164 of the Cr.P.C. which clearly depicts the alleged act committed by the accused on 10th March 2022.

9. Even though the learned Counsel for the applicant made a futile attempt to gain sympathy by showing the photographs of the applicant and the victim, as according to Counsel the applicant was treating the victim as if she is his real daughter, would not be of any

significance in view of the statement of the first informant under Section 164 of the Cr.P.C.

10. Release of the applicant would be detrimental to the first informant and the victim, for, he might extend threats and the first informant might feel insecured being a lonely woman

11. In view of the same, this is not a fit case in which the applicant can be released on bail.

12. Consequently, the application is rejected.

13. The trial Court is directed to expedite the hearing of the Special Case and shall make an attempt to dispose it off at the earliest.

14. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)