

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3459 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Raman Ramkumar Piwal ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Ashish Dubey, for the Applicant.
Mr. R. G. Shatalwar, for the original Complainant.

CORAM: N. J. JAMADAR, J.
DATED: 8th 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.214 of 2023 registered with Shahunagar Police Station, Mumbai, for the offences punishable under Sections 354, 376, 375, 506 and 509 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO Act") has preferred this application to enlarge him on bail.
3. The applicant is the husband of the first informant. Latter has a 10 year old daughter (the victim) by her

quondam husband. The victim, the applicant and the first informant are residing at Matunga Labour Camp.

4. On 17th July, 2023, the first informant had gone to her sister's place at Khar, Mumbai. On her return on 18th July, 2023, the victim narrated to the first informant that on the previous night the applicant had sexually exploited her. The applicant had undressed himself and the child and sexually exploited her. The first informant thus approached the police station and lodged the report.

5. The learned Counsel for the applicant submitted that there is a delay in lodging the FIR. The applicant and the first informant have now resolved the dispute and, therefore, the applicant be released on bail.

6. The learned APP resisted the application. It was submitted that the history narrated by the victim before the Medical Officer clearly incriminates the applicant. Moreover, as noted by the learned Magistrate, while recording the statement of the victim under Section 164 of the Code of Criminal Procedure, 1973 ("the Code") efforts were made to dissuade the victim from stating the truth by the first informant. Therefore, the applicant does not deserve to be released on bail.

7. I find substance in the submission of the learned APP. From the perusal of the allegations in the FIR and the material on record especially the narration by the victim of the sexual exploitation she was subjected to, a strong *prima facie* case is made out against the applicant.

8. The learned Magistrate, who recorded the statement of the victim under Section 164 of the Code of Criminal Procedure, 1973, has specifically noted that the first informant, mother of the victim, was trying to dissuade the victim from disclosing the alleged acts on the part of the applicant and, thereupon, the first informant was asked to leave the Court room and, thereafter, the learned Magistrate recorded the statement of the victim. In her statement under Section 164 of the Code, the victim has reiterated the allegations of sexual exploitation.

9. In the aforesaid view of the matter, the alleged resolution of the dispute between the applicant and the first informant, is of little significance. On the contrary, it seems that efforts were made to win over the victim and dissuade her from making statement before the learned Magistrate.

10. In the backdrop of the nature of accusation, material in support thereof and the aforesaid efforts to win over the

victim, the apprehension on the part of the prosecution that if the applicant is released on bail, there is a strong possibility of tampering with evidence and threatening the victim cannot be said to be unfounded.

11. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

12. Hence, the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) In the circumstances of the case, it may be expedient to request the learned Special Judge to make an endeavour to commence and conclude the trial as expeditiously as possible.
- (iii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]