

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 889 OF 2023
WITH
INTERIM APPLICATION NO. 4055 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Santoshkumar Subhashchandra
Vishwakarma

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ketan Dhavle, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent.

Ms. Ilsa Shaikh, for the Victim.

PI Ghanshyam Nair, Crime Branch, Dindoshi Police Station,
present.

CORAM: N. J. JAMADAR, J.

DATED: 6th FEBRUARY, 2024

ORDER:-

1. The applicant, who is arraigned in CR No.189 of 2018 registered with Dindoshi Police Station, Mumbai, for the offences punishable under Sections 376(2)(i)(n) read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO Act") has preferred this application, through Prison, to enlarge him on bail.

2. Mr. Ketan Dhavle, the learned Counsel, was appointed to espouse the cause of the applicant.

3. I have heard Mr. Dhavle, the learned Counsel for the applicant, Mr. Aagarkar, the learned APP for the State, and Ms. Shaikh, the learned Counsel for the victim.

4. The gravamen of indictment against the applicant is that the victim's mother had gone missing prior to one month of the alleged occurrence. The victim's father had kept the victim and her brother in the house of the applicant, who was residing alongwith his wife, at Khadakpada, Goregaon (E), Mumbai.

5. On 29th March, 2018, the applicant, his wife and their friend Amit Sheth and the victim had gone to Karjat for an outing. The victim, the applicant and his wife went to sleep on the terrace of the house, where they were staying. After a while the applicant allegedly had forcible sexual intercourse with the victim. The wife of the applicant was awake. But she did not intervene. On 31st March, 2018 also the applicant allegedly exploited her. The wife of the applicant allegedly abetted the commission of the alleged offence. On 1st April, 2018, when they returned to Mumbai, the applicant again sexually exploited her and had inserted a pin in her chest. As the pain became unbearable the victim had approached a

neighbour to remove the said pin. The neighbour reported the matter to police.

6. Mr. Dhavle, the learned for the applicant, submitted that the applicant has been falsely roped in. The allegations in the FIR are inherently improbable. The victim has made such allegations of sexual exploitation against other persons as well. The applicant has been in custody since April, 2018. It is unlikely that the trial can be concluded within a reasonable period. Thus, having regard to the inherent improbabilities of the prosecution case and the period of incarceration, the applicant be released on bail.

7. The learned APP and the learned Counsel for the victim resisted the prayer for bail. It was pointed out that there is medical evidence which lends credence to the version of the victim. In her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code") the victim has reiterated the allegations. Therefore, having regard to the situation in which the victim found herself at the time of the alleged occurrence and the fact that the applicant had exploited the said situation, the applicant does not deserve to be released on bail.

8. I have perused Medico-Legal Examination Report of the victim. The victim has narrated before the Medical Officer that she was subjected to forcible sexual intercourse twice while they had gone to Karjat and once after they returned to Mumbai. The history narrated before the Medical Officer substantially corresponds with the allegations in the FIR. In her statement recorded before the learned Magistrate on 12th April, 2018 as well, the victim had narrated the acts of sexual exploitation at the hands of the applicant twice at Karjat and once on the night of 1st April, 2018. In addition, there are statements of neighbours who support the version of the victim.

9. It is true the victim has also stated about sexual exploitation at the hand of another person. However, the matter is required to be appreciated in the light of the fact that on account of the adverse circumstances, the father of the victim had entrusted the victim to the applicant. At the time of the alleged occurrence, the victim was 15 years of age and the applicant 42 year old. Thus, it could be urged that the applicant had abused the position of trust and confidence reposed in him by the father of the victim. In a sense, it

amounts to sexual exploitation of the child, who was in the custody of the applicant.

10. Under sub-section (3) of Section 376 of the Penal Code, if the victim is under 16 years of age, the offence entails punishment which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life. Minimum punishment of imprisonment not less than 20 years has also been prescribed.

11. In the aforesaid view of the matter, I am not inclined to exercise the discretion in favour of the applicant.

12. Nonetheless, since the applicant has been in custody from April, 2018 it would be expedient to request the learned Special Judge to commence and conclude the trial in Special Case No.302 of 2018 arising out of CR No.189 of 2018 as expeditiously as possible and preferably within a period of six months from the date of the communication of this order.

13. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) The learned Special Judge seized with the Special Case No.302 of 2018 arising out of CR No.189 of 2018 is requested to conclude the trial in Special Case No.302

of 2018 as expeditiously as possible and preferably within a period of six months from the date of the communication of this order.

- (iii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

In view of disposal of BA/889/2023, Interim Application does not survive and stands disposed.

[N. J. JAMADAR, J.]