

Bezan Pheroze Tafti @ Bijan Firoz Tafti ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

CORAM : N. J. JAMADAR, J.
DATE : APRIL 16, 2024

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. The applicant, who is arraigned in Special Case No. 279 of 2020 arising out of C.R. No. 81 of 2020 registered with Meghwadi police station for the offences punishable under sections 377 and 506(2) of Indian Penal Code, 1860; sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and section 67A of the Information Technology Act, 2000 has preferred this application to enlarge him on bail.
3. The indictment against the applicant is that few days prior to lodging of the report, the applicant befriended the victim, a 12 year old son of the applicant's house-maid. The applicant had shown videos with pornographic content involving children to the victim

and tried to persuade the victim to indulge in such acts. The applicant had allegedly touched the private parts of the victim. The applicant had shown his private parts to the victim. On the next day, the applicant again called the victim and showed obscene videos, on his mobile phone. The applicant allegedly made the victim to sit on the lap of the applicant and tried to touch the private parts of the victim. The applicant asked the victim to touch the private parts of the applicant. When the victim tried to run away, the applicant threatened to cause harm to the victim and his mother. A day prior to Holi Festival also the applicant had allegedly made the victim see the obscene videos on his mobile phone and inappropriately touched the victim. The said act was noticed by the neighbours on the CCTV. They arrived and confronted the applicant. Therefore, the report came to be lodged.

4. In fact, this is a second application for bail before this Court. The first bail application being BA No. 1282 of 2022 was dismissed as withdrawn when the Court expressed its disinclination to grant bail. This Court had, inter alia, observed as under:-

“1] The matter was heard at length. When this Court had expressed its disinclination to grant bail and started dictating the order, learned counsel for the applicant, in the midst of the order, seeks leave to withdraw the application.
2] Leave is granted. Bail Application stands dismissed as withdrawn.

5. The aforesaid order was carried before the Supreme Court in

Special Leave to Appeal (Crl.) No. 5987 of 2023. The Special Leave to Appeal was, however, dismissed as withdrawn on 19th May, 2023. The applicant again preferred an application for bail before the learned Special Judge. By an order dated 30th September, 2023, the learned Special Judge declined to exercise discretion in favour of the applicant.

6. Since this Court has considered the matter on merits and expressed its disinclination to grant bail and thereupon the application came to be dismissed as withdrawn, on first principles, there is no propriety in entertaining second application for bail again on merits, in the absence of change in circumstances.

7. Nonetheless, I have heard the learned counsel for the applicant, the learned APP for the State and the learned counsel appointed to espouse the cause of respondent No. 2.

8. The learned counsel for the applicant submitted that the applicant has been falsely roped in on account of enmity between the applicant's father and other members of the society. On the day of occurrence, initially, only a NC was lodged by mother of another alleged victim at about 8.45 pm. Subsequently, to falsely rope in the applicant, the FIR came to be lodged by making wild and baseless allegations. It was submitted that to wreak vengeance the persons who are on inimical terms with the applicant and his father have

set up the alleged victims to make false allegations.

9. In opposition to this, the learned APP submitted that apart from the victim who lodged the report, there is another child victim who had also made identical allegations against the applicant. In their statements recorded under section 164 of the Code, the victims have reiterated the allegations. Medico-legal examination report corroborates the version of the victims. There are statements of witnesses who had seen the act of sexual assault on the victim in the CCTV camera and confronted the applicant. The report of forensic analysis of the CCTV footage clearly incriminates the applicant and substantiates the prosecution case.

10. Mr. Kapse, the learned counsel for the victim, supplemented the submissions of the learned APP. It was urged that in the event the applicant is released on bail, there is an imminent threat of the applicant again exploiting unsuspecting children as the material on record indicates that the applicant has repetitively sexually assaulted young boys.

11. I have carefully perused the material on record. The allegations in the FIR find prima facie support in the statements of the victims recorded under section 164 of the Code. The victim/first informant has narrated three separate incidents of sexual assault at the hands of the applicant. The fact that the applicant

had threatened the victim when the victim tried to run away and did not agree to perform the acts as demanded by the applicant also finds mention in the said statement. Prima facie, the medico legal examination report also lends support to the claim of the victim/first informant.

12. What exacerbates the situation is the fact that there is another victim who had made a statement containing allegations of sexual assault. In the statement recorded before the learned Magistrate under section 164 of the Code, the said victim states that on a day the applicant had taken the said victim to the terrace of the building No.3/A, the applicant asked him to remove his pant. Even when the victim declined, the applicant removed his pant and asked the victim to touch the applicant's private part. As the victim raised alarm, and rushed down the terrace, the applicant tried to catch him.

13. There are statements of two witnesses who claimed to have seen the sexual exploitation of the victim/first informant at the hands of the applicant in the CCTV footages. The forensic examination report clearly shows that the victim was made to sit on the lap of the applicant and the latter inappropriately touched the victim. It also indicates that the residents of the soccity came thereat and confronted the applicant.

14. In the face of the aforesaid material and especially having regard to the fact that the earlier Bail Application came to be dismissed as withdrawn, when the Court had expressed its disinclination to grant bail, at this stage, I am not inclined to consider the prayer for bail.

15. The fact that the applicant has been in custody since 11th March, 2020, however, justifies a direction for expeditious conclusion of the trial.

16. I am, therefore, inclined to pass the following order.

ORDER

1] The application stands rejected.

2] The learned Special Judge seized with the Special Case No. 279 of 2020 arising out of C.R. No. 81 of 2020 registered with Meghwadi police station is requested to make an endeavour to conclude the trial in Special Case No. 279 of 2020 as expeditiously as possible and preferably within a period of six months from the date of the communication of this order.

3] In the event the trial is not concluded within the said period, the applicant shall have the liberty to revive the prayer for bail.

4] 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.)