



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3602 OF 2023**

Rahul @ Harsh Jyotindra Vyas
@ Harsh Jyotindrakumar Vyas
versus

... Applicant

The State of Maharashtra and Anr.

... Respondents

Mr. Abhishek Kulkarni with Mr. Sagar Wakali, for Applicant.

Mrs. Gauri Rao, APP for State.

Ms. Siya Chaudhary with Ms. Gunjan Mangala, appointed Advocate for Respondent No.2.

PI Sachin Jadhavar and PSI V.M.Khिलारे, Oshiwara Police Station

CORAM: N.J.JAMADAR, J.

DATE : 9 MAY 2024

P.C.

1. The applicant, who is arraigned in C.R.No.517 of 2023 registered with Oshiwara Police Station for the offences punishable under Section 376(2)(n), 323, 504, 506, 417 of the Indian Penal Code, has preferred this application to enlarge him on bail.

2. The first informant is an actress. She became acquainted with the applicant on 13 October 2021. Proximity developed. There were physical relations between the first informant and the applicant. Later the applicant, as alleged by the first informant, insisted to have a child out of the said relationship. The first informant asked the applicant to solemnize the marriage first. However, against the wish of the first informant, the applicant made her carry the pregnancy. In the month of July

2022, the first informant suffered mis-carriage. In November 2022, the first informant again conceived. Since December 2022, the applicant started to distance himself from the first informant. He refused to stay with the first informant. On 26 April 2023, while the applicant and the first informant were taking ride in a car, when the first informant broached the subject of marriage, the applicant abused and assaulted the first informant and stated that he did not want the first informant and her child. The applicant threatened the first informant with dire consequences. Hence, the report.

3. In the supplementary statement, the first informant alleged that the applicant had extracted a sum of Rs.98 Lakhs from the first informant during the period December 2021 to March 2023.

4. Mr. Kulkarni, learned Counsel for the applicant, submitted that the allegations are ex-facie untrue. In fact, the applicant and the first informant had solemnized the marriage. The mother of the applicant had stayed with the first informant for two months. As there was discord between the applicant and the first informant, the latter lodged a report. The applicant is still willing to cohabit with the applicant and also take responsibility of the child.

5. Learned APP for the State resisted the prayer for bail. It was submitted that the applicant has exploited the first informant sexually, physically and financially. The applicant has criminal antecedents. In the event, the applicant is released on bail, there is an imminent apprehension of causing harm to the first informant and her

child. Therefore, the applicant does not deserve to be enlarged on bail.

6. Ms. Chaudhary, learned Counsel appointed to espouse the cause of the Respondent No.2, also stoutly resisted the prayer for bail. It was submitted that there is no credible material to show that the applicant and the first informant are married. Laying emphasis on the antecedents of the applicant, Ms. Chaudhary would urge that the release of the applicant on bail poses an imminent threat to the life and safety of the first informant.

7. I have perused the allegations in the FIR and the supplementary statement of the first informant and the material on record. From the perusal of the allegations in the FIR, it becomes abundantly clear that while lodging the FIR, the first informant nowhere alleged that the sexual relations were without her consent. Nor the first informant alleged that she gave consent for the said acts on account of misconception of facts. What the first informant alleged was that, she was not willing to have a child but the applicant forced her to conceive.

8. In the supplementary statement, however, the first informant alleged that the applicant had forcible physical relations with her. Likewise, in the FIR, the first informant did not disclose that she had parted with a huge amount of Rs.98 Lakhs. The said allegation also finds place in the supplementary statement.

9. Prima facie, the material on record, indicates that the relationship between the applicant and the first informant was consensual. It appears that the

applicant allegedly distanced himself from the first informant after she conceived. At this stage and in this proceeding, the question as to whether the applicant and the first informant solemnized marriage cannot be delved into. That would be a matter for trial. In the FIR, the first informant states that the mother of the applicant had stayed with her for about 40 days. Prima facie, it appears that there was cordiality between the first informant and the mother of the applicant. Thus, in the circumstances of the case, it does not prima facie appear that the applicant had no intention to solemnize the marriage with the first informant.

10. The apprehension on the part of the prosecution and the first informant is based on the antecedents of the applicant. It is alleged that the applicant has been arraigned in C.R.No.246 of 2017 registered at Oshiwara Police Station for the offences punishable under Sections 395, 392, 452, 384 read with Section 34 of the Indian Penal Code. From the perusal of the copy of the chargesheet in the said case, it prima facie appears that the applicant came to be arraigned in the said crime on the basis of the statements of the co-accused, one of whom was the brother of the applicant.

11. In the aforesaid view of the matter, I am inclined to hold that a prima facie case for exercise of discretion in favour of the applicant is made out. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

12. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Rahul @ Harsh Jyotindra Vyas @ Harsh Jyotindrakumar Vyas be released on bail in C.R.No.517 of 2023 registered with Oshiwara Police Station on furnishing a PR bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicant shall mark his presence at Oshiwara Police Station on first Monday of every month between 11 am to 1 pm for a period of two years and thereafter, first Monday of every trimester till the conclusion of the trial.
- (iv) The applicant shall not contact the first informant and her relatives in any manner whatsoever. The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) The applicant shall file an undertaking before the Court of Session that

he will abide by aforesaid conditions, within two weeks from his release from prison.

(viii) In the event of breach of any of the above conditions, the bail shall be liable to be cancelled.

(ix) 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.)