

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3698 OF 2023

Raj Mohammed Mansur Khan	...Applicant
vs.	
The State of Maharashtra	...Respondent

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2024.03.30
12:03:56 +0530

Mr. Amin Solkar, for the Applicant.
Ms. Supriya Kak, APP, for the Respondent/State.
Mr. A.T. Kadam, PSI, Wadala T.T. police station.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 26, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No. 122 of 2023 registered with Wadala T.T. police station for the offences punishable under sections 376(2)(f)(n) and 376(3) of Indian Penal Code, 1860 and sections 4, 6, 8, 10, 13 and 15 of the Protection of Children from Sexual Offences Act, 2012 and section 67A and 67B of Information and Technology Act, 2000, seeks to be enlarged on bail.
3. The first informant has a 15 year old daughter (victim), who was studying in 9th standard. The applicant is the brother of a neighbour of the first informant. In the month of June, 2022, the victim became acquainted with the applicant and the friendship developed. The first informant alleged, the applicant enticed away the victim to develop relationship with him. The applicant sexually

exploited the victim for the first time in the month of March, 2023 and also had the act video recorded. Thereafter, the applicant had forcible sexual intercourse with the victim on 4 to 5 occasions by threatening to make her objectionable video viral.

4. On 16th April, 2023 the applicant had allegedly forwarded an objectionable video of the victim and the applicant on the Whatsapp of the first informant and made that video as her status. She made an endeavour to delete the status but could not do so. Eventually, the matter was reported to police and the applicant came to be arrested. The statement of the victim came to be recorded. The victim narrated the manner in which she was sexually exploited by the applicant. Medico-legal examination of the victim was also conducted. During the course of investigation, the statements of victim and the first informant were recorded under section 164 of the Code of Criminal Procedure, 1973.

5. Mr. Solkar, the learned counsel for the applicant, submitted that the incident, as alleged by the prosecution, has not at all occurred. The victim was in a relationship with the applicant and desired to solemnize marriage with the applicant. As there was resistance to the said relationship, the first informant and the victim had approached the police. However, they have subsequently filed affidavit and given statement before the learned Special Judge

disclosing true state of affairs. Inviting attention of the Court to the affidavit of the first informant and the statement of the victim, Mr. Solkar made an earnest endeavour to draw home the point that the applicant has been falsely roped in as the victim apprehended that the relationship may not culminate into marriage. Mr. Solkar further submitted that the applicant is barely 20 years of age. The trial will take considerable period. Therefore, the applicant deserves to be enlarged on bail.

6. In opposition, Ms. Kak, the learned APP for the State, stoutly resisted the prayer for bail. Attention of the Court was invited to the medico-legal examination report of the victim. Laying emphasis on the fact that the victim is below 16 years of age and she had narrated the history of aggravated penetrative sexual assault and also the fact that the applicant had hacked the mobile phone of her mother and forwarded the objectionable video featuring the victim and the applicant, it was urged that the said act of forwarding the video singularly dis-entitles the applicant from any discretionary relief.

7. I have perused the material on record carefully. The version of the victim finds prima facie support in the statement of her parents and the medico-legal examination report.

8. In the statement of the victim recorded under section 164 of

the Code, the victim has reiterated the allegations of sexual exploitation by giving threat of making the video viral. The victim specifically states that the applicant had forwarded the video of the applicant and victim on the Whatsapp of her mother.

9. Mr. Solkar submitted that there is no evidence to show that it was the applicant who had forwarded the said video on the mobile phone of the first informant. Taking the Court through the statement of the victim filed before the learned Special Judge, wherein the victim purportedly owns the said act, Mr. Solkar would urge that there is no material to substantiate the said allegations against the applicant.

10. Suffice to note, there are statements of two witnesses which show that upon being informed about the objectionable video being put as a status on the Whatsapp of the first informant, the later had approached her co-sister. She found such video. Despite efforts she could not delete the same. The later categorically states that the first informant came to her with mobile phone and requested to her to delete the status, however, she could not delete the same. She took assistance of her daughter, who is of the same age as victim.

11. The cousin of the victim also stated that her mother and the first informant were struggling to delete the status on Whatsapp of the first informant. She found the obscene video featuring the

victim and the applicant as the first informant's Whatsapp status. She also made efforts to delete the status. However, she could not do so and eventually ended up in deleting the Whatsapp application from the phone of first informant. At this stage, these two statements lend prima facie support to the version of the first informant and the victim.

12. The fact that the first informant and the victim apparently took a somersault and gave no objection to release the applicant on bail, is required to be seen through the prism of aforesaid conduct of the applicant and the attendant facts and material on record. The victim was below 16 years of age. Apart from the sexual exploitation to which the victim was subjected to, what exacerbates the situation is the act of forwarding the obscene video on the mobile phone of the first informant. The said act also prima facie lends credence to the allegation of the victim that by giving threats to make the video viral, the applicant sexually exploited her.

13. At this stage, the statements of the victim and the first informant recorded before the Magistrate under section 164 of the Code command primacy over the affidavit and the statement of the victim purportedly filed before the Special Judge to give no objection for the release of the applicant on bail.

14. For the foregoing reasons, I am not persuaded to accede to the

submissions on behalf of the applicant that the applicant deserves exercise of discretion.

15. The submission on behalf of the applicant that the prolonged period of incarceration as an undertrial prisoner, having regard to the age of the applicant, may have devastating consequence on the applicant, can be addressed by requesting the learned Special Judge to commence and conclude the trial as expeditiously as possible.

Hence, the following order.

ORDER

1] The application stands rejected.

2] The learned Special Judge, Greater Mumbai seized with Special Case No. 802 of 2023 arising out of C.R. No. 122 of 2023 registered with Wadala T.T. police station is requested to commence and conclude the trial as expeditiously as possible.

3] 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.

(N. J. JAMADAR, J.)