

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3872 OF 2022

Baharul Islam Mujibur Rehman Laskar ... Applicant
Versus
The State of Maharashtra and Anr. ... Respondents

.....
Ms. Nazneen Khatri a/w Khatri Mohamed Adil, for the Applicant.

Mr. Ashish Satpute, , APP, for Respondent No.1-State.

Mr. Subir U. Sarkar, Appointed Advocate, for Respondent No.2.

Mr. Arun Sawnat a/w Mr. Nitin Sawant, Bangur Nagar Police Station, present.

.....
CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 22nd MARCH, 2024.

P.C.

This is an application for bail.

2 The applicant was arrested by Bangur Nagar Police Station, in connection with Crime No. 477 of 2021 for the offences punishable under Sections 376(2)(n), 354, 354(D), 506 of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”)

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL
Date: 2024.03.28
10:07:30 +0530

Corrected vide Order dated 27th March, 2024

Rekha Patil

3 The prosecution story, in short, is as follows;

The victim was 18 years and 1 month old at the time of alleged incident since her date of birth is 10th May, 2003. She was staying at Anand Nagar, Oshiwara, Mumbai, with her mother. The victim was working at Meera Tower, Oshiwara, as a housemaid. She was acquainted with the applicant, who was working as a watchman. A friendship developed between them and ultimately it turned into a love affair. It is the case of the prosecution that the applicant has always been stalking the victim and also forwarding messages and giving phone calls.

4 It is alleged that on 14th May, 2021, when the victim had been to Juhu Chowpatty along with the applicant, he asked for a sexual favour which the victim declined. However, the applicant threatened her of dire consequences and forcibly took her at Juhu Chowpatty and behind the stones and had a forcible sexual intercourse with her. A report came to be lodged.

5 The investigation was conducted by the Investigating officer. Statements were recorded. The victim was sent for medical examination. The statement of the victim came to be recorded

under Section 164 of the Code of Criminal Procedure by the learned Metropolitan Magistrate on 6th August, 2021. After investigation charge-sheet was filed.

6 I heard learned Counsel for the applicant, victim and the learned APP.

7 Admittedly, an x-ray report submitted by the learned APP *qua* the victim, which was issued by the Assistant Professor, Department of Forensic Medicine, H.B. T. Medical College and Dr. R. No. Cooper Municipal General Hospital reveals that radiologically age of the victim is more than 19 years but less than 20 years. That being so, there is no question of invoking provision of POCSO.

8 Statement of the victim under Section 164 of the Code of Criminal Procedure recorded by the Metropolitan Magistrate reveals that the victim and the applicant were friends. Since the victim was major at the time of alleged offence, *prima facie*, it does not appeal to ones mind that in a broad day light at a crowded Juhu Chowpatty on the day Id-Ul-Fitra, the applicant would commit forcible sexual intercourse with the victim. No sane man would

believe it.

9 The applicant is behind the bars ever since his arrest on 25th June, 2021. It is informed that the trial Court has not yet framed a charge and, therefore, there is no likelihood bringing the trial to its logical end.

10 Having considered all the aforesaid peculiar circumstances, the application is allowed. Hence, the order.

: ORDER :

(i) The application is allowed.

(ii) The applicant – Baharul Islam Mujibur Rehman Laskar be released on executing a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the trial Court in connection with C.R. No.477 of 2021 registered with Bangur Nagar Police Station, Mumbai.

(iii) The applicant shall attend the concerned Police Station on every Saturday between 3:00 p.m. to 5:00 p.m. till framing the charge.

(iv) After framing the charge, the applicant shall attend the trial Court on each date scrupulously.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper the evidence.

(vi) The applicant shall furnish his cell number as well as residential address to the Investigating Officer and shall also inform if there is any change in the Cell number or the residential address.

(vii) Needless to say that breach of any of the condition would entitle the prosecution to pray for cancellation of the bail.

11 The application is disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]