



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4196 OF 2023**

Manali Shashikant Gawli ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.164 OF 2024

Dr. Snehal Gawli ... Applicant/Intervener
and
Manali Shashikant Gawli ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Nitin Satpute with Ms. Arti Bajpai, Mr. Deepak Jadhav, Mr. A. Khan for Applicant.

Mrs. Geeta P. Mulekar, APP for State.

Mr. Mahesh Vaswani with Ms. Shreya Tiwari, Ms. Lakshita Fatnani i/by Ms. Dharini Nagda for Applicant-Intervener.

Mr. B.D.Babar PSI Nehru Nagar Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 31 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.

2 The applicant, who is arraigned in C.R.No.146 of 2023, registered with Nehru Nagar Police Station for the offences punishable under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, Section 67B of Information Technology Act, 2000 and Section 80 of the Juvenile Justice Act, 2015, has preferred this application to enlarge her on bail.

3. The first informant is the daughter of the applicant by applicant's quondam husband. The first informant alleges, the applicant has been residing separately from Shashikant Gawli, with whom she subsequently married. In the year 2016, the applicant allegedly adopted a boy illegally from his biological mother, while the said boy – victim, was of 9 days. The victim is now six years of age. In the month of October 2020, disputes arose between the applicant and the first informant, as the applicant appeared and cleared LL.B. Examination by adopting dubious means.

4. In the month of June 2022, the first informant allegedly saw a video on YouTube uploaded by the co-accused Smita Satpute. In the said video, the applicant, co-accused and the victim boy appear to be at a farm house. While dancing on a song, co-accused is seen touching the victim inappropriately. Despite the victim resisting the sexually explicit acts, the co-accused repetitively touched the victim inappropriately and thereby sexually exploited him. The first informant alleged, though the incident occurred in the very presence of the applicant, she did not restrain the co-accused and on the contrary, she seemed to have gratified her desire. Hence, the report.

5. Mr. Satpute, learned Counsel for the applicant, submitted that the applicant has been falsely roped in on account of family dispute. There is an inordinate delay in lodging the FIR. The alleged incident occurred on 31 December 2021. The first informant claimed to have seen the video in the month of June 2022 and yet the FIR was lodged in the month of March 2023.

6. Mrs. Mulekar, the learned APP resisted the prayer for bail.
7. Mr. Vaswani, learned Counsel for the Applicant-Intervener, stoutly resisted the prayer for bail. It was submitted that a number of crimes are registered against the applicant who has fraudulently cleared LL.B. Examination. By taking undue advantage of the proximity of the applicant with a police official, the applicant has been committing crimes with impunity . If the applicant is released on bail, there is imminent threat to the safety of the victim and the first informant, urged Mr. Vaswani.
8. In the context of the allegations of the sexual exploitation of a five year old child, I have perused the statements of the first informant, Shashikant Gawli and other witnesses carefully. Prima facie, it appears that the applicant and the first informant have turned astray. Thus, the allegations are required to be considered keeping in view the strained relationship between the parties.
9. The allegations in the FIR, on the point of the sexual exploitation of the child, even if taken at their face value, are primarily against the co-accused. The role attributed to the applicant is that of not restraining the co-accused nay enjoying the alleged act.
10. In the backdrop of this nature of the accusation, whether the offences punishable under Sections 8 and 12 of the Act, 2012 can be attributed to the applicant, prima facie, appears debatable. It is not the case that the applicant had recorded

and/or uploaded the said video. The attendant circumstances are also required to be kept in view. The incident allegedly occurred on 31 December 2021. In June 2022, the first informant allegedly became aware of such video. FIR came to be lodged in the month of March 2023. It appears that the prosecution was lodged after the first informant and the applicant turned astray. Thus, a prima facie case to exercise the discretion in favour of the applicant is made out.

11. The court was informed that the child-victim is in the custody of the first informant. The apprehension on the part of the prosecution of threat to the safety of the victim and the first informant can be taken care of by imposing conditions.

12. Thus, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Manali Shashikant Gawli be released on bail in C.R.No.146 of 2023 registered with Nehru Nagar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark her presence at Nehru Nagar Police Station on first Monday of every month between 11 am to 1 pm for a period of two years or till the conclusion of the trial whichever is earlier.

(iv) The applicant shall not contact the first informant or the victim 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 her 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) 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.

(vii) The Interim Application also stands disposed.

(N.J.JAMADAR, J.)