

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

CRIMINAL APPLICATION NO. 233 OF 2024

**VASANT
ANANDRAO
IDHOL**

Eeshaanee Mahesh Malhotra

...Applicant

Versus

Nitesh @ Nitty Satish Malhotra And Anr.

...Non-applicants

....

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by VASANT
ANANDRAO
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Date: 2024.07.30
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Ababad Ponda, Senior Advocate i/b Mr.Datta Mane for the Applicant.

Mr.Ashok R.Pande for the non-applicant No.1.

Ms.P.P. Bhosale, APP for the non-applicant No.2 – State.

API Mr.Vinod Vasave, Worli Police Station present.

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CORAM : AVINASH G. GHAROTE, J.

DATE : 30th JULY, 2024

P.C.:

1. Heard the learned counsel for the applicant and Mr.Pande, the learned counsel for non-applicant No.1, The learned A.P.P. appears for the non-applicant No.2 - State. The application questions the order dated 20.12.2023 (page 65), by which the condition No.10 imposed by the learned Sessions Court while enlarging the non-applicant No.1 on bail by order dated 07.11.2023 (page 32) has been relaxed.

2. The learned counsel for the applicant while assailing the order contends, that by the said order, a situation has been created, which was not provided for by the order granting bail and there is every possibility of the applicant, being under the apprehension of the incident being repeated. He therefore, submits that as this position has not been considered by the learned Sessions Court while passing the impugned order dated 20.12.2023, on account of which the same cannot be sustained.

3. Mr.Pande, the learned counsel for the non-applicant No.1 states that when the application for bail was allowed, the non-applicant No.1 was not residing in Flat No.28, and has thereafter shifted to the premises, on account of which this is clearly an attempt of grabbing the property of the non-applicant No.1, which cannot be countenanced and he cannot be deprived of the use and occupation of his property. He therefore supports the impugned order dated 20.12.2023 by which condition No.10 in the bail order dated 07.11.2023 has been relaxed.

4. Condition No.10 in the bail order dated 07.11.2023 (page 32) reads as under :

“10. The accused is further directed not to make

any contact, visit and enter into the area where victim resides.”

5. The basic allegations against the non-applicant No.1 as narrated, in the bail order dated 07.11.2023 are as under :

“3. The victim is Niece of the accused. She is aged about 21 years. The victim and accused were residing together along with the parents and grandmother of the victim. In the year 2019 and 2021, the mother and grandmother of the victim died due to illness. The father of the victim died on 11.02.2023. Thereafter, the accused and victim were residing in the same house alone. In the year 2004, the accused had taken divorce from his wife and thereafter he did not perform marriage. After the demise of her father, the accused started teasing the victim by saying that she is unlucky and spoiled his family. He used to abuse and kick the victim. It is further alleged that the accused used to beat up the victim.

4. Since April 2023, the accused started pulling hand and passing comments on the body of the victim. He used to remove the clothes of the victim and also capture her nude photographs in Web Cam. Whenever the victim tried to oppose him, he told her that the house is in his name and after the death of her parents she has no other option for residing. He used to beat up her. When the victim told him that she will lodge report against him, the accused told her that if she will lodge report, police will give her custody to him only. Due to such fear, the victim did not lodge

any report against the accused. It is alleged that since April 2023, the accused forcibly kissed her, touched her private part. It is also alleged that the accused used to put his tongue on the private part of the victim and also asked her to dance for him. It is also alleged that if the victim will not do such things, the accused used to threaten her on the point of knife. Due to which, the victim was frightened. It is further alleged that the accused forcibly tried to establish physical relation with the victim.

5. On 15.05.2023 at about 02:00 to 2:30 am, when the victim was sleeping in her bedroom, the accused came to her and forcibly removed her clothes and inserted his penis into the mouth of the victim. She resisted the accused, however, he cums in victim's mouth. Thereafter, the accused confined the victim in her room. After sometime, the accused came and put burning camphor on her left leg, right hand, right leg and due to which, she sustained burn injuries. At about 9.30 pm., the accused was in his room, the victim fled from the home and went to the house of her paternal aunt who is residing at Khar (West), Mumbai and narrated the incident to her. The daughter of her paternal aunt took the victim to the doctor for treatment. Thereafter, the victim informed about the incident to her other relatives and lodged report against the accused."

6. The factual position recorded in the bail order itself indicates the gravity of the offence, which is alleged against the

non-applicant No.1. It is an admitted position, that at the time of the incident, the applicant, was residing in the same Flat No.28 and it is only on account of the incident in question that she was required to shift some other place and has re-entered the flat consequent to the filing the complaint, and presently is residing there. The learned Sessions Court, while passing the order dated 20.12.2023 and relaxing condition No.10, though records in paragraph 5 (page 64) that the victim is residing in the flat as on the date of passing of the said order, still relaxes the condition, thereby permitting the non-applicant No.1, to enter the property, which has the effect, of bringing about the same situation, which existed when the incident is alleged of. The condition has been relaxed on account of a perceived misconception, that not relaxing the condition would amount to permitting the applicant in grabbing the property of non-applicant No.1, ignoring the fact that the incident has happened in the same flat when the non-applicant No.1, was residing there and therefore increasing the possibility of the non-applicant No.1 either threatening the applicant or a repeat of the incident. Such a situation could not have been brought about by the learned Session Court by the

impugned order dated 20.12.2023, for whatever reason. It is material to note that the learned counsel for the applicant does not dispute that as of date, the applicant has not raised any dispute regarding the ownership of the flat in question that however does not mean, that the learned Sessions Court, would create a situation, by which the victim and the accused both are forced to reside in the same flat.

7. In my considered opinion, since relaxation of condition No. 10 of the bail order dated 07.11.2023, by the impugned order dated 20.12.2023 has the effect of putting the victim and non-applicant No.1 who is alleged of the aforesaid offence in the same flat, the impugned order cannot be sustained.

8. The learned counsel for the non-applicant No.1 submits that consequent to the filing of this application, since 16.02.2024, on the basis of an oral statement made by learned counsel for the non-applicant No.1 to this Court, the non-applicant No.1 has since vacated the premises and is residing else where.

9. In the light of the aforesaid discussion, I am not able to accept the reasons given in paragraph 5 of the impugned order dated 20.12.2023 for relaxation of condition No.10 to the bail

order dated 07.11.2023. The impugned order dated 20.12.2023 is therefore hereby quashed and set aside and Miscellaneous Application No.5 in Sessions Case No.934 of 2023 is dismissed. The application is allowed in the above terms.

(AVINASH G. GHAROTE, J.)