

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.30 OF 2024

Pravesh Ashok Dubey @ Pawan Kumar @
Ankit Sharma ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Gaurav Shukla a/w. Mr. Jainam Jain and Mr. Parth Barot i/b. Apex Juris LLP
(Adv. Sunil Shukla) for Applicant.

Mr. Sagar R. Agarkar, APP for Respondent-State.

Ms. Pranita P. Hingmire for Respondent No.2.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 10, 2024

P.C. :

. Heard Mr. Shukla, learned counsel for the applicant, Mr. Agarkar, learned APP for the respondent-State and Ms. Hingmire, learned counsel appointed to appear on behalf of the respondent No.2.

2. In the present case, the applicant was arrested on 06.09.2023 in connection with FIR No.0203 of 2023 dated 06.09.2023 registered with Tilak Nagar (Dombivali) Police Station, District - Thane, for offences under Sections 323, 336, 376, 419, 504 and 506 of the Indian Penal Code, 1860 (IPC), as also under Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Sections 66(c) and 66(d) of the Information Technology Act, 2000.

3. The statement of the informant leading to registration of the FIR shows that at that time, she was 17 years old and she gave description of the series of events starting from May 2023, involving the applicant. Specific allegations are made, including the allegation pertaining to forcible sexual intercourse leading to registration of the aforesaid serious

offences against the applicant.

4. The investigation was completed and charge-sheet was filed.

5. The learned counsel for the applicant submits that there are inherent contradictions in the statement of the informant that led to registration of the FIR. It is submitted that the incident of forcible sexual intercourse on 17.07.2023, as per the statement, occurred in a *galli* near the college attended by the first informant. There are no specifics and it appears that this happened in broad daylight. It is submitted that there is no supporting evidence with regard to the said incident in the form of the CCTV footage to show that the two were seen together on the said date. Similarly, allegation with regard to the incident of 01.08.2023, when the first informant was allegedly beaten up by the applicant, there is no supporting evidence. It is further submitted that even with regard to the allegation pertaining to the applicant blackmailing the first informant on the basis of the alleged video recorded by him, there is no supporting evidence. Further contradictions are pointed out by the learned counsel for the applicant, in the history narrated by the first informant during her medical examination and other such material, to contend that the material on record does not indicate the involvement of the applicant in the serious offences registered against him.

6. The learned APP, on the other hand, relies upon statement of the first informant recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.). It is submitted that the CCTV footage and the *panchanama* executed in that context shows the presence of the applicant in the morning on 17.07.2023 at a particular place, which correlates with the allegations made by the first informant. It is submitted that the material on record indicates that the involvement of the applicant is evident and since serious offences are registered against the applicant at the behest of the respondent No.2, who was minor at the

relevant time, this Court may not show any indulgence to the applicant.

7. The learned counsel appointed to appear on behalf of respondent No.2 supported the contentions raised by the learned APP. It is submitted that the contents of the medical examination report when read with the statement of the informant leading to registration of the FIR and her statement recorded under Section 164 of the Cr.P.C., indicate that the series of events has been consistently stated and there is enough material to indicate that the applicant is responsible for the aforesaid acts.

8. Although serious offences are registered against the applicant, that in itself, cannot be a factor against him while considering the present application. A perusal of the statement of the informant leading to registration of the FIR shows that certain events have been specifically described. The allegation pertaining to May 2023 is that, when video calls were made between the first informant and the applicant, without her knowledge, the applicant recorded the same and at that time, the first informant was wearing short clothes. It is alleged that this video was used by the applicant to blackmail the first informant and to force himself on her. The specific incident pertaining to first forcible sexual assault pertains to 17.07.2023 and the manner in which it is described in the statement shows that it occurred in a *galli* near the college attended by the first informant. There is no reference to any *chawl* or any specific place where the incident is said to have occurred. The impression gathered from the aforesaid statement of the informant is that, such an incident happened in open. In such circumstances, there ought to be some supporting material to show that the first informant was indeed seen with the applicant on the aforesaid date and time as alleged by her. There does not appear to be statement of any witness in that regard. In this situation, reliance was heavily placed on *panchanama* of the CCTV footage.

9. This Court has perused the same. It only records that in the morning at about 6:04 a.m. to 6:52 a.m., the applicant was seen in the CCTV footage at a particular place. It does not indicate that the first informant was seen with the applicant in the CCTV footage. To that extent, the learned counsel for the applicant is justified in contending that even this material falls short of linking the applicant with the specific allegation of the forcible sexual intercourse committed by him on 17.07.2023 in the morning.

10. Similarly, with regard to the allegation dated 01.08.2023, wherein it is alleged that the applicant physically assaulted the first informant, there is no supporting statement of any witness of the two having been seen together, although the incident is said to have taken place near the college of the first informant. It is relevant to note that in the statement of the first informant recorded under Section 164 of the Cr.P.C., there is no reference to such physical assault and it is only generally stated that the applicant had abused her. It is also relevant to note that although repeated allegation has been made about the way the applicant was blackmailing the first informant on the basis of such photos or video, the charge-sheet does not show recovery of any such material.

11. Apart from this, a perusal of the medical examination report of the first informant would show that in the history narrated by her, she has stated that there was sexual intercourse with consent with the applicant in July 2023. This contradicts the statement that led to registration of the FIR. In the aforesaid portion of the medical history, there is again reference to a *chawl*, which is found in the statement recorded under Section 164 of the Cr.P.C. also. But such details are surprisingly missing in the statement that led to registration of the FIR. Such contradictions do indicate a *prima facie* case in favour of the applicant. It is specifically contended that when the father of the first informant came under

pressure due to the fact that his young daughter i.e. the first informant had consumed rat poison on 01.09.2023 and she had to be admitted in the hospital, that eventually, the FIR was caused to be registered. There is much more than meets the eye and in the face of the material filed with the charge-sheet, this Court finds that the applicant has made out a *prima facie* case in his favour to contend that this could be a case of false implication.

12. Accordingly, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with FIR No.0203 of 2023 registered with Tilak Nagar Police Station (Dombivali), District - Thane, on furnishing P.R. Bond of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall attend Tilak Nagar (Dombivali) Police Station on the first Monday of every month, during the pendency of the trial;
- (C) The applicant shall cooperate with the trial Court for expeditious disposal of the trial;
- (D) The applicant shall not contact the first informant or her parents in any manner during the pendency of the trial;
- (E) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (F) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

13. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

14. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

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