

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3283 OF 2022

Pramay Jayesh Tiwari

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION NO. 233 OF 2024

Shivam Kamlesh Pandey

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

WITH

BAIL APPLICATION NO. 3800 OF 2022

Nikhil Sanjay Mishra

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

WITH

BAIL APPLICATION NO. 3541 OF 2022

Vijay Rajendraprasad Yadav

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

- Mr. A. S. Khandeparkar, Senior Counsel a/w Mr. Rohit Mahadik, Mr. Rushikesh Bhagat i/b Mr. Prerak Sharma, for Applicant in BA/3283/2022.
- Ms. Sana Raees Khan (Through V.C.) a/w Mr. Aditya Parmar, for Applicant in BA/233/2024.
- Ms. Anjali Patil a/w Mr. Tohid Shaikh, for Applicant in BA/3541/2022 and BA/3800/2022.
- Mr. Sagar R. Agarkar, APP for Respondent – State.
- Mr. Nikhil Wadikar a/w Mr. Niranjan Kandade and Mr. Parth Katira i/b Mr. Pradip Zende, for Intervenor in BA/3283/2022 and for Respondent No.2 in BA/3800/2022, BA/3541/2022 and BA/233/2024.
- Mr. D.S. Patil, PSI, Kolsheewadi Police Station.

CORAM : MANISH PITALE, J.
RESERVED ON : 01st OCTOBER, 2024
PRONOUNCED ON : 17th OCTOBER, 2024.

P. C. :

1. The applicants herein are original accused No.1 (Vijay Rajendraprasad Yadav), accused No.2 (Pramay Jayesh Tiwari), accused No.4 (Shivam Kamlesh Pandey) and accused No.7 (Nikhil Sanjay Mishra). They are seeking bail, as they were all arrested on 15.06.2022, in connection with First Information Report No.0306 of 2022, dated 15.06.2022, registered at Kolshewadi Police Station, District Thane, for offences under Sections 305, 306, 354 and 376(D) of the Indian Penal Code, 1860 (IPC) and Sections 6, 8, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), as also Sections 66E and 66B of the Information Technology Act, 2000. Initially, offence only under Section 306 of the IPC was registered against the accused persons, but subsequently, the aforementioned offences were also added.

2. On 12.06.2022, the daughter of the informant jumped from the terrace of an apartment and died due to the injuries. Initially, an Accidental Death Report (ADR) was registered under Section 174 of the Code of Criminal Procedure, 1973 (CrPC). Subsequently, on 15.06.2022, on the statement of the informant i.e. the father of the victim, the aforementioned FIR came to be registered. In the statement, the informant relied upon

contents found on “Notes App” on the mobile phone of the victim, wherein she had narrated as to the manner in which the accused persons, including the applicants, had sexually and mentally harassed her from the year 2018, till the date she committed suicide. On the basis of the aforesaid statement and registration of the FIR, the applicants were arrested. Investigation was undertaken, wherein the statements of a number of witnesses were recorded and eventually charge-sheet was filed against the accused persons, including the applicants for the aforementioned offences. This Court is informed that 3 other accused persons were granted bail, while the applicants have continued to languish in jail from 15.06.2022.

3. The learned senior counsel appearing for the applicant in Bail Application No.3283 of 2022, and the learned counsel for the applicants in Bail Application Nos.3541 of 2022, 3800 of 2022 and 233 of 2024, submitted that in the present case, even if the material available on record is taken into consideration, there are a number of discrepancies and contradictions, indicating that the applicants have been wrongly implicated in the present case. It was sought to be indicated that the victim was attracted towards accused No.1 – Vijay Rajendraprasad Yadav and when she found that the said accused person was getting married, a day prior to his marriage, she committed suicide. It was submitted that if the parents of the victim as well as her maternal uncle were aware about the sexual harassment allegedly inflicted

by the applicants and other accused persons on her, it was inexplicable as to why an ADR was registered under Section 174 of the CrPC on 12.06.2022, when the victim committed suicide.

4. The mobile phone in which the aforesaid contents were found in the notes app was moving from one place to another from 12.06.2022 to 15.06.2022. The maternal uncle of the victim has a shop for selling mobile phones, thereby indicating that the mobile itself had been tampered with and the contents found in the notes app therein, could not have been the basis for registration of the FIR. It was further submitted that the statement of the mother of the victim, as also statements of all other witnesses were recorded after the applicants were already arrested, thereby indicating that such statements could be said to be afterthought. The recovery of the mobile phone of the victim was also stated to be doubtful by comparing the *panchanama* with the timing of the FIR in the present case. It was submitted that the postmortem report also did not show any injury to the genitals of the victim and it was emphasized that there was no incident in proximity to the incident, which indicated that the ingredients of the offence under Section 306 of the IPC were completely missing. As regards the recorded conversation between two applicants, it was submitted that the contents of the same in no manner indicated involvement in the aforesaid offences. On this basis, it was submitted that the applicants have a strong *prima facie* case in their favour and

since they have already suffered incarceration for a period of about 2 years and 4 months, this Court may consider enlarging the applicants on bail, particularly because even charges have not been framed in the present case.

5. On the other hand, the learned APP vehemently opposed the present applications. He submitted that the contentions raised on behalf of the applicants raised issues that were necessarily requires to be tested at the time of trial. The learned APP emphasized upon the contents of the statements of the witnesses recorded during the course of investigation. It was submitted that such statements given by witnesses living in the neighbourhood clearly indicated as to the manner in which the applicants had been harassing the victim over a period of about 4 years, which left no alternative for her but to take her own life. It was submitted that the contents found in the notes app of the mobile phone of the victim are required to be appreciated in this backdrop. The phone call conversation recorded between two applicants indicated as to the manner in which they reacted immediately after the victim took her own life. All these factors clearly pointed towards the involvement of the applicants in the offences in question. It was submitted that merely because the parents and the maternal uncle of the victim could not immediately come out with the details of the sexual harassment suffered by the victim, cannot be a ground that can inure to the benefit of the applicants.

6. The learned APP referred to the forensic analysis of the mobile phones of the applicants and submitted that the report demonstrated that obscene videos were found in the mobile phones of accused No.1 – Vijay Rajendraprasad Yadav and accused No.2 – Pramay Jayesh Tiwari. This corroborated the statements made by witnesses and the contents in the notes app of the mobile phone of the victim. It was submitted that such material is enough to indicate the involvement of the applicants in the present case and they do not deserve any indulgence from this Court.

7. The learned counsel appearing for respondent No.2 (first informant) also vehemently opposed the prayers made in the present applications. He placed much emphasis on the statements of witnesses i.e. persons from the neighbourhood recorded during the course of investigation. He submitted that these statements clearly brought out the picture of the repeated sexual harassment suffered by the victim at the hands of the applicants, thereby showing their involvement in the serious offences. It was submitted that the applicants do not deserve any indulgence.

8. This Court has considered the rival submissions in the light of the material placed on record. The offences registered in the present case undoubtedly are very serious, particularly because the victim in the present case was a minor as per the allegations made in the FIR, as well as the material

that has come on record upon filing of the charge-sheet. The thrust of the allegations against the applicants appears to be that they had repeatedly sexually harassed the victim over a period of time between the year 2018 to 2022. They were all residing in the neighbourhood and the witnesses in the present case gave statements after the incident that they had also seen as to the manner in which the applicants had harassed the victim. On this basis, it was alleged that the victim suffered mental and physical harassment to the extent that she had no alternative but to commit suicide.

9. In order to appreciate the rival submissions, this Court has perused the entire material on record, which includes the statement, that led to registration of the FIR, statements of witnesses, seizure *panchanama* of the mobile phone of the victim, the postmortem report, as also the forensic report as regards the mobile phones of the applicants and other such material.

10. It is an undisputed position that after the incident on 12.06.2022, an ADR was registered under Section 174 of the CrPC. At that point in time, neither the father of the victim i.e. the informant nor her mother raised any suspicion against any persons, much less the applicants. Three days after registration of the ADR, the postmortem being conducted and the cremation having taken place, the father of the victim gave his statement, which led to registration of the FIR. The aforesaid statement was

based on contents found on the notes app of the mobile phone of the victim. The aforesaid contents gave the details of the manner in which the applicants and other accused persons allegedly harassed the victim, which led to her suicide. The statement, leading to registration of the FIR, gives an impression as if the informant i.e. the father of the victim came to know for the first time about the actions of the accused persons, after having perused the contents in the notes app on the mobile phone of the victim. But, a perusal of the statement of the mother of the victim, recorded during the course of investigation, shows that she was aware about the harassment, including sexual harassment being suffered by her daughter i.e. the victim, in December, 2021 itself, when the victim told her about the same. In fact, the statement of the mother of the victim, indicates that she was aware from the year 2018 itself, that the applicants were harassing her daughter i.e. the victim. In such a situation, when the victim committed suicide on 12.06.2022, it appears a bit unnatural that the mother of the victim did not come forward to immediately inform the police about the actions of the applicants and other accused persons. Instead, the aforesaid ADR was registered under Section 174 of the CrPC. In this backdrop, the manner in which the mobile phone of the victim and the contents thereof came to light, assumes great significance. The statement of the maternal uncle of the victim recorded on 16.06.2022 shows that, on 12.06.2022 itself, applicant / accused No.2 – Pramay Jayesh Tiwari

had possession of the mobile phone of the victim and he handed over the same to the nephew of the said maternal uncle of the victim. Thus, the said mobile phone came in possession of the maternal uncle of the victim on 12.06.2022 itself. The said witness i.e. maternal uncle of the victim has stated that after the cremation of the victim, on 15.06.2022, the mobile phone was opened and the contents in the notes app were perused at about 11:00 hours. According to him, upon reading the contents, he as well as the father of the victim i.e. the informant and others were shocked.

11. A perusal of the FIR shows that the same was registered at 05:36 hours in the morning itself on 15.06.2022. *Prima facie*, there appears to be contradiction, because if the contents of the notes app of the mobile phone of the victim were perused for the first time at 11:00 hours on 15.06.2022, how was it that the FIR was registered prior in point in time at 05:36 hours on the same day. It is significant to note that the statement of the informant i.e. the father of the victim, which led to registration of the FIR, quotes the contents of the notes app on the mobile phone of the victim.

12. Apart from this, the seizure *panchanama* of the mobile phone of the victim shows that it was conducted between 05:45 hours to 06:40 hours on 15.06.2022, which clearly contradicts the aforesaid statement of the maternal uncle of the victim that the mobile phone was opened for the first

time at 11:00 hours when he, as also the informant, read the contents of the notes app on the mobile phone of the victim for the first time. It is also significant to note that even the identity of the seized mobile phone purportedly belonging to the victim can be said to be rendered doubtful because the seizure *panchanama* dated 15.06.2022 records the mobile phone as “Model VIVO V-25 5G Black in colour,” while bill of the said mobile phone produced with the charge-sheet pertains to mobile phone “Model VIVO V-21 Dusk Blue colour.” It is also to be noted that the said mobile phone of the victim came into the custody of the maternal uncle on 12.06.2022 at about 22:30 hours and it remained in his possession till 15.06.2022, at least up to 11:00 hours.

13. It is to be noted that even after the death of the victim, calls were received at 21:03 and 21:09 hours. Another call appears to have been received on the said phone at 01:56 hours from the mobile phone of the very nephew of the maternal uncle of the victim, to whom the accused No.2 – Pramay Tiwari had allegedly handed over the mobile. The aforesaid material does make out a strong *prima facie* case in favour of the applicants, in as much as the very identity of the mobile phone of the victim, its seizure by the police and the contents in the notes app, are rendered seriously doubtful. It is for this reason that this Court is not elaborating upon the contents of the notes app, which formed the very basis of the registration of the FIR.

14. The learned APP as well as the learned counsel appearing for the first informant placed a lot of emphasis on the statements of the mother of the victim and the neighbours recorded during the course of investigation. It is to be noted that the statement of the mother of the victim was recorded on 17.06.2022 i.e. 2 days after the applicants were already arrested on the basis of the contents in the notes app found in the mobile phone of the victim. As noted hereinabove, in her statement, she has referred to some incidents of harassment from the year 2018 onwards and a specific narration of sexual harassment given by the victim in December, 2021. Yet, there was no whisper of such allegations when the said ADR was registered on 12.06.2022, after the victim committed suicide. The statements of the witnesses in the neighbourhood were also recorded between 16.06.2022 and 18.06.2022, again after registration of the FIR on the basis of the contents in the notes app of the mobile phone of the victim. These statements referred to alleged incidents that were observed by them over a period of time, wherein they found the victim in the company of the applicants when she was agitated as she appeared to have been harassed by the applicants. There is substance in the contention raised on behalf of the applicants that such statements of witnesses would have to be tested during the course of recording of evidence and that such statements did not contain any details about the dates of incidents or the acts of harassment, much less sexual harassment and that such

statements appear to be general and vague statements about the harassment allegedly suffered by the victim at the hands of the applicants.

15. It is also relevant to note that the postmortem report does not show any injuries to the genitals of the victim and there are no signs of any act of forcible sexual intercourse or injuries suffered by the victim in proximity to the point in time when the victim committed suicide. It is settled law that one of the main ingredients of the offence under Section 306 of the IPC is some incident or action on the part of the accused persons soon before the victim committing suicide, which would indicate that the accused persons could be said to have abetted the suicide. In the present case, the material on record, does not *prima facie* show any such act on the part of the accused persons, including the applicants.

16. The reference to the alleged conversation between applicant/accused No.1 – Vijay Rajendraprasad Yadav and applicant/accused No.2 – Pramay Jayesh Tiwari in recorded form available with the investigating authority, even if taken into consideration in its entirety, *prima facie* does not indicate the ingredients of the offences registered against the applicants. Such conversation could be said to be showing anxiety on the part of the said accused persons after the act of suicide of the victim.

17. The emphasis placed by the learned APP on the forensic report

pertaining to the mobile phones of the applicants/ Accused Nos.1 and 2 cannot be treated as a ground for rejecting the bail applications. The report appears to be indicating that there was an obscene video extracted from the mobile phone of applicant/accused No.1 – Vijay Rajendraprasad Yadav, but *prima facie* it does not appear to be related to the present case. As regards applicant/accused No.2 – Pramay Jayesh Tiwari, the forensic report indicates that the video extracted from the mobile phone of the said accused person, is an obscene video pertaining to the present case. But, the aforesaid fact in itself would have to be tested at the time of trial and only on the basis of the said report, it would be difficult to hold that sufficient ground is made out to deny bail application of said applicant/accused No.2 – Pramay Jayesh Tiwari.

18. It has come in the material on record that the victim committed suicide one day prior to the date on which the applicant/accused No.1 – Vijay Rajendraprasad Yadav was to get married. There is some substance in the contention raised on behalf of the said applicant that the victim could have been upset with the said event, as she may have been in a relationship with the said applicant.

19. The aforesaid analysis of the material on record was undertaken only to examine as to whether the applicants have made out *prima facie* case in their favour. Having analyzed the material on record, considering the fact that

the contents in the notes app on the mobile phone of the victim appears to be the main stay of the case of the prosecution. But, the deficiencies and discrepancies found in the manner in which the mobile phone of the victim was recovered, hits at the very basis of the prosecution case and it can be said that the applicants have made out a *prima facie* case in their favour. They have already suffered incarceration for about 2 years and 4 months and the charges are yet to be framed. Hence, this Court is inclined to allow the applications.

20. In view of the above, the applications are allowed in the following terms :

- (A) The applicants shall be released on bail in connection with FIR No.0306 of 2022, dated 15.06.2022, registered at Kolshewadi Police Station, District Thane, on furnishing PR bonds of ₹ 50,000/- each with one or two sureties each in the like amount to the satisfaction of the Trial Court.
- (B) The applicants shall remain outside the jurisdiction of Kolshewadi Police Station, District Thane, during the pendency of the trial.
- (C) The applicants shall attend the police station Manpada, Dombivali, on the First Monday of every month between 10.00 a.m. to 12.00 noon, during the pendency of the trial.
- (D) The applicants shall not contact the informant or any witnesses in any manner, during the pendency of the trial.
- (E) The applicants shall attend the proceedings before the

Trial Court on every date, except when exempted, for reasons to be recorded in writing.

- (F) The applicants shall not tamper with the evidence in any manner. They shall not influence the informant, witnesses or any other persons concerned with the case.
- (G) The applicants shall upon being released immediately inform the Investigating Officer of their Contact numbers and residential address and update the same in case of any change.
- (H) The applicants shall surrender their passports, if any, before the Trial Court within one week of being released on bail.

21. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled.

22. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicants and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

23. The applications are disposed of accordingly.

(MANISH PITALE, J.)