

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 707 OF 2024

Mukeshbhai Goradhanbhai Darji

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

- Ms. Apurva Gupte a/w Mr. Mahesh R. Patil, for Applicant.
- Mr. Tanveer Khan, APP for Respondent – State.
- Mr. Vijayanand C. Jadhav, for Respondent No.2.
- Mr. Sanjay Shipane, API, Bhayander Police Station.

CORAM : MANISH PITALE, J.

DATE : 27th August, 2024.

P. C. :

1. Heard Ms. Gupte, learned counsel for the applicant and Mr. Khan, learned APP for the State as well as Mr. Jadhav, learned counsel having instructions to appear on behalf of the first informant.

2. The respondent No.2 (first informant) has filed an affidavit stating that she has no objection to the applicant being released on bail. This Court is not relying upon the said affidavit of consent of respondent No.2 and the application has been considered on merits.

3. The learned counsel appearing for the applicant submits that in the present case, a perusal of the statement of the informant, leading to registration of the FIR, the statements of witnesses recorded during the course of investigation and other material forming part of the charge-sheet, taken

together also do not make out the ingredients of the offences alleged against the applicant. It is submitted that the applicant has remained behind bars since 24.07.2023 and this fact may also be taken into consideration while disposing of the present application.

4. On the other hand, learned APP submits that the allegations made against the applicant are serious and it is alleged that under misconception that by indulging in physical relationship with the applicant, the informant would be cured of her state of mind, she indulged in the said relationship and hence it cannot be said to be consensual. It is submitted that the ingredients of offences registered against the applicant are made out.

5. In the present case, First Information Report No.0288 of 2023, dated 23.07.2024 was registered at Bhayander Police Station, District Mira Bhayander, Vasai-Virar for offences under Sections 313 and 376(2)(n) of the Indian Penal Code (IPC) and under Section 3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (Black Magic Act).

6. This Court has perused the statement of the informant, leading to registration of the FIR, as also other the statements recorded during the course of investigation and the material forming part of the charge-sheet. This Court is inclined to allow the application for the following reasons

- (i) A perusal of the statement of the informant indicates that even according to her, the acts of physical relationship and sexual activity between her and the applicant took place between 2016 and 2019. It is stated that thereafter, there was a gap of about 4 years and in the year 2023, such activity again took place and thereafter, the informant was constrained to approach the police for registration of the FIR. On the face of it, *prima facie*, it appears a little farfetched that a woman who was aged about 35 years at the time of registration of the FIR and a few years younger at the time when the alleged acts took place between 2016 and 2019, was under a misconception of fact. If the alleged activity of the year 2023 is ignored for a moment, the FIR appears to be belated and the statement regarding alleged activity of 2023 appears to be included so as that to show as if the FIR was registered closer to the last such activity.
- (ii) The ingredients of offence under Sections 3(2) of the Black Magic Act, *prima facie* do not appear to be made out in the light of the contents of Sections 3(1) and 3(2) read with schedule to the said Act. The schedule provides for

specific acts that would be covered under the expressions inhuman, evil and Aghori Practices and Black Magic. The allegations in the statement of the informant *prima facie* fall short of such offence under Section 3(2) of the Black Magic Act.

- (iii) The statement of the witness Vaishali, who is stated to be a friend of the informant indicates that physical intimacy between the applicant and the informant took place at her premises. *Prima facie* it appears that the relationship between the applicant and the informant was consensual and therefore, the applicant has made out a case for being enlarged on bail.

7. In view of the above, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with FIR0288 of 2023, dated 23.07.2024 was registered at Bhayander Police Station, District Mira Bhayander, Vasai-Virar, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for

expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;

(C) 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;

(D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile numbers and residential addresses to the Trial Court and update about the same, if there is any change.

8. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of bail.

9. 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.

10. The application is disposed of.

(MANISH PITALE, J.)