

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.751 OF 2024

Abdul Sarvar Husain Salmani ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Murtuza Najmi a/w. Mr. Sunny Punamiya, Mr. Dilip Shukla and Mr. Shaikh Faizan for Applicant.

Mr. Sagar R. Agarkar, APP for Respondent No.1-State.

Mr. Hiren Mehta for Respondent No.2.

Mr. Vijay Waghmare, API, Mira Road Police Station.

CORAM : MANISH PITALE, J.
DATE : JUNE 14, 2024

P.C. :

. Heard Mr. Najmi, learned counsel appearing for the applicant, Mr. Agarkar, learned APP appearing for the State and Mr. Mehta, learned counsel for respondent No.2.

2. The applicant has approached this Court seeking bail in connection with F.I.R. No.0426 of 2023 dated 28.12.2023 registered at Mira Road Police Station for offences under Sections 376, 376(2)(n), 406, 323 and 506 of the Indian Penal Code, 1860 (IPC).

3. The learned counsel for the applicant invited attention of this Court to the statement of the respondent No.2 (victim), which led to registration of the FIR. He submits that in the said statement, the respondent No.2 has alleged that the applicant, for the first time, committed forcible sexual intercourse with the respondent No.2 in April, 2021, and that thereafter, he repeatedly committed the said act. Thereafter, the respondent No.2 has referred to the last occasion on which such an act was committed as 13.09.2023, further stating that the

applicant also promised to marry the respondent No.2. It is further alleged by the respondent No.2 that in April, 2023, the applicant convinced her to part with substantial sums of money on the pretext of starting a business of salon with the respondent No.2. It is highlighted that while the alleged acts were committed by the applicant from April 2021 till 13.09.2023, the FIR was actually registered on 28.12.2023, without there being any explanation for the delay. The learned counsel for the applicant has relied upon documents filed with the charge-sheet, including photographs to contend that the relationship between the applicant and the respondent No.2 was consensual. It is further alleged that the FIR was registered at the behest of the respondent No.2 as a counter-blast to an earlier FIR registered at the behest of the applicant on 02.12.2023 against one Shoaib, who according to the applicant, is a business associate of the respondent No.2. The said Shoaib was arrested and granted bail after 12 days, whereupon the respondent No.2 caused the present FIR to be registered. On this basis, it is submitted that this Court may consider allowing the present application.

4. The learned APP invited attention of this Court to the statement of the respondent No.2 recorded before the Magistrate under Section 164 of the Code of Criminal Procedure, 1973. He submitted that the aforesaid statement, when compared with the statement leading to registration of the FIR, does show certain variance in the manner in which the incidents have been described by the respondent No.2. The learned counsel appearing for the respondent No.2 tendered an affidavit in reply. The same is taken on record. He submitted that the grievance of the respondent No.2 is three-fold. Firstly, the manner in which the applicant committed forcible sexual assault with the respondent No.2; secondly, the manner in which the applicant took advantage of the depressed state of mind of the respondent No.2 and made false promise of marriage to commit the said acts; and thirdly, the manner in which he took

considerable amounts of money from the respondent No.2 on the pretext of starting a joint business of salon. It is submitted that the trial be expedited and the applicant may not be released on bail as he would be threatening the respondent No.2 upon being released on bail.

5. This Court has perused the material on record in the light of the rival submissions. On the face of it, there is a delay of more than three months in registration of the FIR, even if this Court is to go by the statement made by the respondent No.2 that the last incident of forcible sexual intercourse was on 13.09.2023. The respondent No.2 has claimed that from April, 2021 to 13.09.2023, the applicant was committing such acts. It is claimed that such acts are committed in the house of the respondent No.2 where she lives with her mother.

6. Attention of this Court was also invited by the learned counsel for the applicant to the statement of a neighbour of the respondent No.2, who stated that she had seen a person regularly coming to the house of the respondent No.2. Apart from this, the photographs placed on record along with the charge-sheet, which were provided by the respondent No.2 herself, *prima facie*, do indicate a relationship between the applicant and the respondent No.2. If the applicant was committing such a dastardly act from April, 2021 till 13.09.2023, such photographs showing relationship between the parties would not have come to the fore.

7. Although much emphasis is placed on behalf of the applicant on the FIR dated 02.12.2023 registered at the behest of the applicant against one Shoaib, who is said to be the 'boyfriend' of the respondent No.2, to claim that the present FIR was a counter-blast, this Court, at this stage, is not inclined to comment upon the same. This is because such allegations are made in the present application on affidavit on behalf of the applicant but, material to corroborate the same is yet to come on record.

But, it is crucial that in the affidavit in reply tendered on behalf of the respondent No.2, the statements made by the respondent No.2 appear to be at variance with her statement, which led to registration of the FIR. Apart from this, her statement recorded before the Magistrate under Section 164 of the Cr.P.C. gives a completely different picture, in the sense that at one place, she has alleged that on 01.04.2021 when the applicant fetched her from Borivali station and took her to her house, he gave her water and after drinking the same, she felt dizzy. Thereafter, the applicant committed the act of the forcible sexual intercourse. *Prima facie*, there are contradictions in the claims made by the respondent No.2 at various points in time, particularly when her statement leading to registration of the FIR is compared with the statement recorded under Section 164 of the Cr.P.C. Hence, this Court finds that the applicant has made out a *prima facie* case in his favour. He has remained behind bars since 28.12.2023. This Court is, therefore, inclined to allow the present application.

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

- (A) The applicant shall be released on bail in connection with F.I.R. No.0426 of 2023 dated 28.12.2023 registered at Mira Road Police Station on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand only] and one surety in the like amount;
- (B) 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;
- (C) The applicant shall cooperate with the proceedings before the trial Court and he shall attend each and every date, unless specifically exempted by the trial Court;

- (D) The applicant shall not enter jurisdiction of Mira Road Police Station, during the pendency of the trial;
- (E) Upon being released on bail, within two weeks, the applicant shall communicate the details of his contact number and residential address to the trial Court.

9. 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.

10. The application is disposed of.

(MANISH PITALE, J.)

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