

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

BAIL APPLICATION NO. 1456 OF 2024

Shagun Raghu Koharao

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

- Mr. Prachish Shukla, for Applicant.
- Mr. Sagar R. Agarkar, APP for Respondent No.1.
- Mr. Irfan Alim Shaikh (Appointed advocate through legal aid), for Respondent No.2.
- Mr. S.G. Ghag, PSI, Malvani Police Station.

CORAM : MANISH PITALE, J.

DATE : 20th SEPTEMBER, 2024.

P. C. :

1. Heard, Mr. Shukla, learned counsel for the applicant and Mr. Agarkar, learned APP for the State and also Mr. Shaikh, learned counsel appointed to appear on behalf of the first informant.

2. The applicant is seeking bail as he was arrested on 06.03.2019 in connection with First Information Report No.231 of 2019, registered on 06.03.2019 at Police Station Malvani, Mumbai, for offences under Sections 376(2)(n)(f) and 506 of the Indian Penal Code, 1860 (IPC) and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The informant in the present case is the victim herself, who was

SHRIKANT
SHRINIVAS
MALANI

Digitally signed by
SHRIKANT
SHRINIVAS MALANI
Date: 2024.09.21
12:00:38 +0530

stated to be aged about 15 years at the time of registration of the FIR.

4. In her statement, leading to registration of the FIR, she has described two incidents, one on 03.03.2019 at night time and the other incident in the intervening night between 04.03.2019 and 05.03.2019. She has alleged that the applicant, who is the husband of her cousin sister, forcibly removed her clothes and had forcible sexual intercourse with her. It is alleged that thereafter, with help of a neighbor, she approached the police for registration of the FIR.

5. The applicant was arrested on 06.03.2019 and he has remained behind bars since then, thereby showing that he has suffered incarceration for a period of about 5 years and 7 months. The charge-sheet was filed in the year 2019 itself, but charge is yet to be framed.

6. The learned counsel for the applicant submits that there are discrepancies in the statement of the informant. In the statement, leading to registration of the FIR, she has referred to two such incidents of forcible sexual intercourse, while in the history recorded during the medical examination she has claimed that she has suffered forcible sexual intercourse at the hands of the applicant on three occasions i.e. 03.03.2019, 04.03.2019 and 05.03.2019. In her statement recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.), the informant has referred to only one such incident dated

03.03.2019.

7. It is further submitted that the medical examination was undertaken after about 8-10 days on 13.03.2019. The findings in the said report do not support the claims made by the informant. It is sought to be indicated that this is a case of false implication, for the reason that the informant was brought to the place of the applicant about one month prior to the alleged incidents, for the reason that she was having an affair with a boy in her native place in Orissa, which was opposed by the family members. It was stated that the boy, with whom she was having an affair, reached Mumbai and in that context the informant used to stay out late in the night, which was opposed by the applicant and hence she was enraged and she falsely implicated the applicant.

8. But, at the same time, the learned counsel appearing for the applicant fairly conceded that there is no statement of any witness to support the said version of false implication. It is highlighted that the investigating officer also did not take any efforts to record the statements of the parents and the family members of the informant, which could have thrown some light on the aforesaid aspect of the matter. It was highlighted that the applicant has suffered long period of incarceration and there is hardly any possibility of the trial being completed within reasonable period of time and therefore, this

Court may consider enlarging the applicant on bail.

9. On the other hand, learned APP submitted that the material on record, including statements of the informant and the witnesses, sufficiently makes out a strong *prima facie* case against the applicant. He is facing prosecution for serious offences, including offence under Section 4 of the POCSO Act, which prescribes punishment of life imprisonment. It is submitted that this Court may consider expediting the trial, as only 16 witnesses have been cited in the charge-sheet.

10. The learned counsel appointed to appear on behalf of the informant, supported the submissions made by the learned APP. In fact, he submitted if the material is properly appreciated, even Section 6 of the POCSO Act, pertaining to aggravated sexual assault can be invoked against the applicant.

11. This Court has considered the rival submissions in the light of the material on record. The statement of the informant at various places does indicate that there is some discrepancy therein. While in her initial statement, leading to registration of the FIR, she has referred to two specific incidents of alleged forcible sexual intercourse. In the history recorded during the course of medical examination, she has claimed that she suffered such forcible sexual intercourse on three occasions while in the statement recorded before the

Magistrate under Section 164 of the Cr.P.C., she has described only one incident dated 03.03.2019, involving the applicant in the act of forcible sexual intercourse.

12. The medical examination in the present case was surprisingly conducted after about 8-10 days of the alleged incidents. There is no explanation as to what caused such substantial delay in medical examination of the victim – informant, although the case involves serious offences under the POCSO Act. The medical examination report does record that the hymen is torn, but it is indicated to be an old tear.

13. It is also significant to note that the spot *panchnama* records that the place of the incident was a room with dimensions of 6 x 10 ft. Even as per the description given by the informant and the material that has come on record, it appears that there were at least 5 individuals sleeping in the said small room, including an infant on the dates of the alleged incidents. *Prima facie*, it appears unlikely that if the applicant had disrobed the victim and she had resisted the same and further if he had forced himself on the informant, none of the other members of the family sleeping in the room would have woken up.

14. There is no material on record to support the backdrop facts sought to be alleged on the part of the applicant, while raising the theory of

false implication, but the material on record at places does appear to show discrepancies, which can be taken into consideration.

15. In any case, the applicant has suffered incarceration for about 5 years and 7 months. He has no criminal antecedents. The charge-sheet was filed in the year 2019 itself, and charge is yet to be framed. There does not appear to be any likelihood of the trial being completed within a reasonable period of time.

16. It is also noted in an earlier order of this Court that notice was issued to respondent No.2 – informant, but she was not traceable. This further indicates that the trial could be delayed on that count as well.

17. The Supreme Court and this Court in a series of judgments has held that in such situations where the period of incarceration undergone by the accused under trial is substantial and there is remote possibility of the trial being completed within a reasonable period of time, Constitutional Courts ought to exercise their power to grant bail to the accused under trial whose right to speedy trial as a facet of fundamental right under Article 21 of the Constitution of India is violated.

18. This is one such case where this Court is inclined to exercise such power. Accordingly, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with FIR No.231 of 2019, registered on 06.03.2019 at Police Station Malvani, Mumbai, on furnishing PR bond of ₹25,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- (B) The applicant shall not contact the victim or her family members in any manner, during the pendency of the trial.
- (C) The applicant shall attend the Trial Court proceedings on each and every date, except when specifically exempted by the Trial Court.
- (D) The applicant shall not tamper with the evidence in any manner. The applicant shall not influence the informant, witnesses or any other persons concerned with the case.
- (E) The applicant shall upon release immediately inform the Investigating Officer about his Contact numbers and residential address and update the same in case of any change.

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

20. It is made clear that the observations made in this order are

limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

21. The application is disposed of.

(MANISH PITALE, J.)