

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1642 OF 2024

Nandkumar Hiruji Jadhav ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Bharat Manghani a/w. Ms. Drushti Gala for Applicant.
Ms. R. V. Newton, APP for Respondent-State.
Ms. Aditi Madan Athawale for Respondent No.2. (Appointed through Legal Aid).
Mr. Bajrang K. Desai, PSI, Samta Nagar Police Station

CORAM : MANISH PITALE, J.
DATE : OCTOBER 15, 2024

P.C. :

. Heard Mr. Manghani, learned counsel for the applicant, Ms. Newton, learned APP for the respondent-State, as also Ms. Athawale, learned counsel appointed to appear on behalf of the victim i.e. respondent No.2.

2. The applicant, in the present case, was arrested on 24.04.2018 in connection with FIR No.311 of 2018 dated 23.04.2018 registered with Samtanagar Police Station, Mumbai, for offences under Sections 376(2) (f), (j) and (n), 323 and 506 of the Indian Penal Code, 1860 (IPC), as also Sections 4, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The informant in the present case is the mother of the victim. She approached the police on 23.04.2018 and stated that on 03.10.2017, a teacher of the victim had informed her that the applicant, to whom the victim addressed as 'dad', was sexually exploiting her from April 2016 till September 2017. It was further stated that in April 2018, the

applicant had taken away the other child of the informant i.e. a minor son and when he was brought back, she thought it appropriate to approach the police to register the FIR.

4. The investigation was undertaken and charge-sheet was filed. Charges were framed and the trial commenced. The evidence of the victim is completed and presently, the informant i.e. the mother of the victim is in the witness box. Her examination-in-chief is over and cross-examination is pending.

5. The learned counsel for the applicant submits that the applicant has a *prima facie* case in his favour. He submits that there is delay in registration of the FIR and the most crucial aspect of the matter is that the aforesaid teacher, who had allegedly informed the informant about the sexual exploitation of the victim, in her statement recorded during the course of investigation, did not mention any such sequence of events, thereby taking away the very basis of the registration of the FIR. It is submitted that the applicant has suffered incarceration for about six and half years. The copy of the *Rojnama* of the concerned Court was brought to the notice of this Court, which indicated that from 14.03.2024 till date, the informant i.e. the mother of the victim, who is in the witness-box, has not turned up for cross-examination and the applicant continues to languish in jail. The prosecution intends to examine 19 witnesses and it is submitted that at this pace, the trial would take substantial period of time. On this basis, it is submitted that the application may be allowed.

6. On the other hand, the learned APP as well as the learned counsel appearing for the respondent No.2 have opposed the prayer made in the present application. It is submitted that the question of delay in registration of the FIR and the efficacy of the statement of the teacher would all be examined at the stage of trial. It is also submitted that the informant is in the witness-box and at this crucial juncture, the applicant

ought not be enlarged on bail as it may adversely affect the witnesses, who are yet to be examined. It is submitted that the trial can be expedited, instead of entertaining the present application.

7. This Court has considered the rival submissions in the light of the material available on record. In the present case, the material on record indicates that although the applicant and the informant are not married, they were in some kind of relationship with each other. Even according to the informant, the applicant was her childhood friend and during the period when her own married life was in a crisis, a relationship developed between her and the applicant. The applicant is also a married person but in the aforesaid backdrop, it appears that the applicant was either living with the applicant or he was frequently visiting the informant's house. The informant has two children i.e. the victim girl child and a son.

8. It is perhaps in this backdrop that the victim addresses the applicant as 'dad'. The statement of the informant leading to registration of the FIR shows that even according to her, she became aware about the alleged sexual exploitation of her own minor daughter at the hands of the applicant between April 2016 and 27.09.2017, on the basis of the information provided by a teacher of the victim on 03.10.2017. This was in the backdrop of the teacher finding the victim under-performing in the school and remaining aloof. It is to be noted that despite having gained knowledge of such a serious matter, as far back as on 03.10.2017, the informant, for some reason, chose to approach the police only on 23.04.2018 i.e. after more than six months. The further contents of the aforesaid statement of the informant leading to registration of the FIR indicate an incident that occurred in April 2018, concerning her minor son and the applicant, which allegedly triggered the reason for approaching the police.

9. *Prima facie*, this Court finds it unnatural for the informant, despite being the mother of the minor victim girl child, to have waited for more than six months to cause the FIR to be registered. Another crucial aspect of the matter is that, while the trigger point for approaching the police for registration of the FIR was the information received from the teacher of the victim about sexual exploitation at the hands of the applicant, the statement of the aforesaid teacher recorded on 27.04.2018 during the course of investigation reveals that she did not mention anything about such sexual exploitation of the victim. In her statement, the teacher has only referred to the under-performance of the victim in school and she being lonely and aloof. In that context, the teacher has stated as to how she had met the informant i.e. the mother of the victim while there is no reference at all to any information regarding sexual exploitation being given to the informant. There is *prima facie* substance in the contention raised on behalf of the applicant that the aforesaid statement of the teacher takes the wind out of the case of the prosecution.

10. Although the statement of the victim herself recorded during the course of investigation as well as the statement recorded under Section 164 of the Code of Criminal Procedure, 1973 indicates that she has alleged sexual harassment and exploitation at the hands of the applicant, the aforesaid statements have to be considered in the backdrop of the manner in which the criminal process has been triggered in the facts and circumstances of the present case. This Court is of the opinion that to that extent, the applicant has been able to make out a *prima facie* case in his favour.

11. Apart from this, it is an admitted position that the applicant has suffered incarceration for a period of about six and half years. He has no criminal antecedents. The stage of the trial is that, while the victim has

already been examined, the informant i.e. the mother of the victim is still in the witness-box. Her examination-in-chief is over but her cross-examination is pending at least from March 2024 onwards.

12. This Court has gathered a *prima facie* impression that the informant is either not interested in helping pursue the prosecution case or she is interested in delaying the trial, so that the applicant continues to languish in jail. The prosecution intends to examine total 19 witnesses. Although in practical terms, fewer witnesses may be examined, at this pace, the proceedings before the concerned trial Court would take substantial period of time.

13. In view of the above, this Court is of the opinion that the applicant has made out a case for being enlarged on bail. The apprehension expressed by the learned APP and the learned counsel appearing for the applicant that releasing the applicant on bail may adversely affect the witnesses, who are yet to be examined, can be dealt with by imposing appropriate conditions, while granting bail to the applicant.

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

- (A) The applicant shall be released on bail in connection with FIR No.311 of 2018 dated 23.04.2018 registered with Samtanagar Police Station, Mumbai, 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 not enter Kandivali, Mumbai, during the pendency of the trial;
- (C) The applicant shall report to Dindoshi Police Station on the first Monday of every month between 10:00 a.m. and 12 noon during the pendency of the trial;

- (D) The applicant shall attend every date before the concerned Court, unless exempted for the reasons to be recorded in writing. The applicant shall cooperate with the trial Court for expeditious disposal 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.

15. 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.

16. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

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