

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

BAIL APPLICATION NO. 1649 OF 2024

Shahbullah Hasan Raja Shaikh

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

- Mr. Mohammed Zain Khan a/w Mr. Ashraf Kapoor i/b one Legal, for Applicant.
- Mr. Mayur S. Sonavane, APP for Respondent.
- Ms. Sonia Miskin, for Respondent No.2.

CORAM : MANISH PITALE, J.

DATE : 15th OCTOBER, 2024.

P. C. :

1. Heard Mr. Khan, learned counsel for the applicant, Mr. Sonavane, learned APP for the respondent-State and Ms. Miskin, learned counsel appointed to appear on behalf of respondent No.2 – victim.

2. The applicant in the present case is seeking bail, as he was arrested on 25.10.2023, in connection with First Information Report No.1125 of 2023, dated 25.10.2023, registered at Police Station Mumbra, District Thane City, for offences under Sections 376, 376(2)(j) and 506(2) of the Indian Penal Code, 1860 (IPC) and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The victim – informant in the present case is the daughter of the applicant. She has leveled serious allegations against her own father, as regards

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sexual exploitation resulting in registration of the aforesaid offences. The statement of the informant, leading to registration of the FIR, specifies a particular incident dated 13.10.2023, when the applicant i.e. her own father indulged in actions graphically described in the statement, leading to registration of the aforesaid offences. The applicant was arrested. The investigation is completed and charge-sheet was filed on 04.12.2023. The charges are yet to be framed and the prosecution intends to examine 8 witnesses. The applicant has remained incarcerated for a period about 1 year.

4. The learned counsel for the applicant submits that this is a case of false implication in the backdrop of a matrimonial discord between the applicant and his wife i.e. the mother of the victim. It is alleged that in order to wreak vengeance on the applicant, the mother of the victim has caused the FIR to be registered. The learned counsel for the applicant has highlighted the contradictions and discrepancies in the statement of the victim – informant, leading to registration of the FIR, on the one hand and on the other hand the history recorded during medical examination, as also the statements of the victim and her mother recorded under Section 164 of the Code of Criminal Procedure, 1973 (CrPC). Attention of this Court is also invited to a document styled as “Deed of Divorce by Mutual Consent” between the applicant and his wife, to claim that after the said document was executed and the applicant married another person, the mother of the victim

triggered a sequence of events, leading to registration of the FIR. It was submitted that since the applicant has a strong case on merits, this Court may consider enlarging him on bail. The applicant undertakes to abide by conditions that may be imposed by this Court.

6. On the other hand, the learned APP as well as the learned counsel appearing on behalf of respondent No.2 (victim – informant) have vehemently opposed the present bail application. It is submitted that the discrepancies or alleged improvements in the version of the victim are all matters to be considered at the stage of trial. It is submitted that this is a case where serious allegations have been made by the daughter against her own father as regards sexual exploitation and therefore, the applicant ought not to be enlarged on bail. It is submitted that there is every chance of the applicant influencing the informant and the witnesses upon being released on bail. Instead, it is submitted that this Court may consider expediting the trial.

7. This Court has considered the rival submissions in the light of the material available on record. A perusal of the statement of the victim – informant, leading to registration of the FIR shows that she has caused the FIR to be registered on the basis of one single incident that allegedly took place on 13.10.2023. It is alleged that the victim had joined the company of her father alongwith her younger sister and on the date and time of the incident, after

the victim had dropped her younger sister to school and she came back home, her own father i.e. the applicant sexually assaulted her in the manner described in the statement.

8. It is also to be noted that while the incident took place on 13.10.2023, the FIR was registered on 25.10.2023 when the victim met her mother and narrated the incident.

9. A perusal of the medical examination report of the victim shows that she was medically examined at about 09:00 p.m. on the date of the registration of the FIR. In the column pertaining to history of sexual violence, the date recorded is 19.10.2023 instead of 13.10.2023. Although the victim had claimed that a single incident had taken place on 13.10.2023, the history of sexual violence records multiple such incidents. It is further seen that during medical examination the victim claimed that apart from the manner in which she was sexually exploited by the applicant on 13.10.2023, he also had peno-oral intercourse with her, which significantly does not find mention in her statement, leading to registration of the FIR.

10. A perusal of the statement of the victim recorded under Section 164 of the CrPC shows that she has made material improvements in her version and allegations leveled against the applicant. Not only has the victim referred to the singular incident of 13.10.2023, which was the basis of

registration of the FIR, she further claimed that two years prior to the said incident, when lockdown due to covid-19 had been imposed, the applicant had forcible physical relations with her against her will. Similarly, the statement of the mother of the victim recorded under Section 164 of the CrPC shows such material improvements as regards the allegations of sexual exploitation leveled against the applicant.

11. There is substance in the contention raised on behalf of the applicant that if it was true that even two years prior to the incident of 13.10.2023, the applicant had forcible physical relations with the victim, in the natural course of human behaviour, the victim would not have joined the company of the applicant. The reason stated by the victim that she came to her father because she had some difference of opinion with her mother, also does not *prima facie* fit into the natural course of human conduct. Equally, the mother of the victim would have ensured that the victim does not join the company of her father i.e. the applicant, despite being aware of forcible physical relations established by the applicant two years prior to the incident dated 13.10.2023.

12. In this backdrop, the matrimonial dispute between the applicant and the mother of the victim assumes significance. In this context, when the document styled as Deed of Divorce by Mutual Consent is perused, it is found

that the applicant was required to take care of the financial needs of the victim, her sister and their mother. Even before this Court, the learned counsel appearing for the victim made submissions to the effect that the applicant had not abided by the obligations cast upon him under the said Deed of Divorce by Mutual Consent. This further indicates that there could be a possibility of involving the applicant in the present case in the backdrop of serious disputes between the victim's mother and the applicant.

13. A *prima facie* case is made out by the applicant in his favour. He has already suffered incarceration for about 1 year. The charges are yet to be framed, despite the fact that the charge-sheet was filed as far back as on 04.12.2023. This Court is inclined to allow the present application. As regards the apprehensions expressed by the learned APP and the learned counsel appearing for respondent No.2, appropriate conditions can be imposed upon the applicant, while enlarging him on bail.

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.1125 of 2023, dated 25.10.2023, registered at Police Station Mumbra, District Thane City, on furnishing PR bond of ₹ 50,000/- with one or two sureties in the like

amount to the satisfaction of the Trial Court.

- (B) The applicant shall not enter the jurisdiction of Police Station Mumbra, District Thane, during the pendency of the trial.
- (C) The applicant shall report to the Police Station Kalwa, District Thane, on the First Monday of every month between 10.00 a.m. to 12.00 noon, during the pendency of the trial.
- (D) The applicant shall not in any manner contact the informant and the other witnesses, during the pendency of the trial.
- (E) The applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.
- (F) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (G) The applicant shall upon being released immediately inform the Investigating Officer of his Contact numbers and residential address and update the same in case of any change.

15. 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.

16. 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.

17. The application is disposed of.

(MANISH PITALE, J.)