

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

BAIL APPLICATION NO. 1839 OF 2024

Babu Jethalal Patel	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Manoj Mohite, Senior Advocate, a/w Suresh M. Sabrad, Mallesh Chalwadi, Pratik Sabrad, Amey Sawant, neha Zanje for the Applicant.

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

Mr. Tejesh Dande, Roshan Hule, Bharat Gadhavi, Trushna Shah, Mansi Dande and Aniket Shitole for Respondent No.2.

CORAM: MANISH PITALE, J.

DATE : 10th JULY 2024

P.C. :

. Heard learned Senior Counsel for the applicant, learned APP for respondent No.1-State and learned counsel appearing for respondent No.2 (first informant).

2. In the present case, the applicant was arrested on 3rd January 2024 in connection with FIR No. 0009 of 2024 dated 3rd January 2024 at Manpada Police Station, Dist. Thane, for offence under Section 376(2)(n) of Indian Penal Code, 1860 (IPC).

3. The FIR was registered on the statement of the informant, who is stated to be a 19 years old lady. She alleged that in the intervening night of 31st December 2023 and 1st January 2024, the

applicant, who is 31 years old and a person known to her and her family, took her on a motorcycle after forcibly giving her alcohol and thereupon, committed forcible sexual intercourse, beneath a stage erected for the new year program.

4. Since, the allegation was extremely serious and the offence was registered under Sections 376 (2)(n) of the IPC, the Police swung into action, arrested the applicant, completed the investigation and submitted charge-sheet on 20th February 2024.

5. During the course of investigation itself, on 13th January 2024, in her supplementary statement, the informant appears to have taken a somersault, by stating that whatever happened on the date and time of the incident was with her consent and under the influence of alcohol. She has specifically stated that she does not wish to pursue her complaint against the applicant/accused. She also referred to her statement recorded on 9th January 2024 under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and claimed that, even before the Court, she does not wish to pursue her complaint against the applicant. On being added as a party in the present case and upon being served with a notice, she has appeared before this Court through a counsel and an affidavit has been filed on her behalf. In paragraphs 4 to 7 of the affidavit she has stated as follows :

“4. I say that I did not accompany our family members and instead requested Applicant for taking me for a ride on a bike for getting myself some fresh air. I say that as per my request,

Applicant took me for a ride. I say that thereafter we both again had some alcohol. I say that we both were under the said influence of alcohol and under the said influence twice i.e. in the dark and under the stage had physical relations. I say that under the stage we were caught by the security guard and I was frightened.

5. *I say that I was very much scared and frightened when my sister came and after returning home the Applicant stayed in our house and left in the morning.*

6. *I say that under fear and as per the instructions of family members I have filed the complaint. I say that on 09.01.2024 my statement was recorded under Section 164 of Cr.P.C. wherein even though I have stucked to my stand wherein I have stated that I do not wish to proceed with the complaint.*

7. *I say that on 13.01.2024 in my supplementary statement submitted before the Police Station, I have again submitted that the events occurred between myself and the applicant were consensual and accordingly submitted for withdrawal of the complaint. I submit that for the aforesaid reasons mentioned above, I do not wish to proceed further with the complaint.”*

6. Considering the varied stands taken by the informant immediately after registration of the FIR, as also the specific stand taken on affidavit before this Court in the present application, it is *prima facie* evident that the informant will not be supporting the prosecution case. On this ground alone, the applicant has made out a case in his favour for granting bail. He has remained behind bars since 3rd January 2024 and no further purpose would be served by keeping the applicant behind bars.

7. While this Court is inclined to grant bail to the applicant,

such instances of serious allegations being made and thereafter, the informant resiling from her stand have been noticed and in one such case i.e. in Bail Application No. 1893 of 2024 in the order dated 14th June 2024, this Court had observed as follows :

“14. Before parting with the present application, it would be appropriate to note that in urban areas like the city of Mumbai, very often such cases are before the Court where a relationship having gone wrong between two adult individuals, results in initiation of criminal proceedings. The valuable time of the Police, which can be otherwise utilized in investigating serious offences, is wasted in carrying out investigation in such cases. With passage of time, the alleged victim and the accused come together, having resolved their differences and then the victim gives consent for grant of bail and even for quashing of such proceedings. This results in valuable time of the Court also being wasted.

15. This Court is of the opinion that in such cases a robust mechanism ought to be developed for imposing heavy costs on such individuals who end up wasting the time of the Investigating Authority as well as the Court. In an appropriate case, this Court shall proceed to pass such an order.”

8. Considering the above mentioned facts brought to the notice of this Court and the stand now taken on behalf of the informant, the present case is indeed a fit case for imposing costs while allowing the present application. The FIR in the present case was registered on 3rd January 2024, on the basis of the statement given by the informant on 1st January 2024. Immediately thereafter, on 9th January 2024, during the course of the statement of the applicant recorded under Section 164 of the Cr.P.C. and on 13th January 2024, when the supplementary statement was recorded,

the informant resiled from her earlier statement.

9. But, since the allegations made by the informant in the present case were of serious nature and being an offence against woman, the Police had to take immediate action and the investigation was completed expeditiously with the charge-sheet being filed immediately on 20th February 2024. The valuable time of the Police and the investigating machinery was utilized for the present case, which perhaps could not have been fruitfully utilized for investigating serious offences including offences against the State and the sovereignty of this country. Such private disputes which trigger the criminal process, particularly when they are initiated at the behest of a woman, claiming serious offences committed on her body and her mind, the Police is required to act expeditiously and considerable time of the investigating machinery is utilized in the process.

10. Subsequently, as in this case, immediately after registration of the FIR, the aggrieved person comes round to take a stand which indicates that the initial grievance and complaint is not to be pursued. In such cases, the valuable time of the Court is also wasted in considering such bail applications and also when proceedings are initiated for quashing of FIR by consent of the alleged victim. Hence, while allowing this application this Court is inclined to impose costs, which ought to be borne by the informant in such cases. But for obvious reasons, the applicant before this Court is ready to bear the costs. This Court is therefore

inclined to issue appropriate directions.

11. 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.0009 of 2024 dated 3rd January 2024 at Manpada Police Station, Dist. Thane, on furnishing P.R. Bond of ₹10,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(b) On the basis of the statement made by the learned Senior Counsel appearing for the applicant on instructions, the applicant shall deposit costs of Rs.1,00,000/- in the following account.

A/c. Name : Central Police Welfare Fund

Account No. : 914010029005759

Bank Name : Axis Bank

IFSC Code : UTIB0000060

(c) The costs shall be deposited within four weeks from today.

12. The application is disposed of.

MANISH PITALE, J.