

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1903 OF 2024

Atif Mohd Harun Mansuri @
Atif Mohd Haroon Masnsuri ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Dilip H. Shukla a/w. Mr. Shaikh Faizan for Applicant.
Ms. Rutuja A. Ambekar, APP for Respondent-State.
Mr. S. S. Ghag, PSI, Malvani Police Station.

CORAM : MANISH PITALE, J.
DATE : AUGUST 16, 2024

P.C. :

. Heard Mr. Shukla, learned counsel for the applicant and Ms.Ambekar, learned APP for the respondent-State.

2. By order dated 24.07.2024, this Court had directed the victim to be made a party and she was to be served through the investigating officer. The learned APP has tendered the papers indicating that the respondent No.2 victim has been served. In terms of the aforesaid order dated 24.07.2024, the applicant has also placed on record a copy of the statement of the victim dated 11.06.2024 recorded before the Magistrate.

3. In the present case, the applicant was arrested in pursuance of the FIR dated 17.10.2023 bearing FIR No.1357 of 2023 registered with Malvani Police Station, Brihanmumbai, for offence under Section 363 of the Indian Penal Code, 1860 (IPC). Subsequently, offences under Sections 366-A, 368, 376(2)(n), 376(3) of the IPC as also Sections 4, 5(l), 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) were added. The FIR was initially registered against unknown persons, but the names of accused persons were added

subsequently, including that of the applicant.

4. The learned counsel for the applicant submits that the material on record does not indicate that ingredients of the offences are existing as against the applicant. It is submitted that the version given by the informant at the time of registration of the FIR is completely washed out by her statement recorded under Section 164 of the Code of Criminal Procedure, 1872 (Cr.P.C.). It is submitted that although the victim has named the applicant as a friend and she has also stated that the applicant had taken her to the room of his friend, no overt act is alleged against him, much less an act of forcible sexual intercourse.

5. The learned APP submits that in the statement of the victim recorded under Section 161 of the Cr.P.C., she has levelled allegations against other accused persons and also against the applicant. The statement of the wife of the applicant's friend also demonstrates that the victim had told the same version to her also, as was stated in her statement under Section 161 of the Cr.P.C. As regards the statement under Section 164 of the Cr.P.C., learned APP submits that it is before this Court and it can be perused.

6. The victim was served through the investigating officer but she has chosen not to appear before this Court. This is perhaps because of the contents of the statement recorded under Section 164 of the Cr.P.C. This Court has taken note of the fact that although during the course of investigation, the victim appears to have given a particular version of the narration of events, the said version itself indicates the propensity on the part of the victim to periodically run away from her house and in that process, she allegedly being sexually exploited by the accused persons. In the said narration, the victim has indeed named the applicant as one of the persons involved. But, the statement of the victim recorded under Section 164 of the Cr.P.C. on 11.06.2024 before the Magistrate shows

that although she has stuck to her version with regard to her exploitation by other accused persons, insofar as the applicant is concerned, she has only stated that after the co-accused person had exploited her physically, she met the applicant, who is stated to be her friend. It is further stated that the applicant took the victim to the room of his friend and thereafter, it is simply stated that the father of the victim and the police found her at the aforesaid room. There is no reference to any overt act, much less any act of forcible sexual exploitation by the applicant and this is a factor that needs to be taken into consideration.

7. The applicant has remained behind bars since October 2023. Going by the contents of the statement of the victim recorded under Section 164 of the Cr.P.C., it appears that she may not be supporting the prosecution version as against the applicant. Hence, this Court is convinced that bail can be granted. Accordingly, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with FIR No.1357 of 2023 registered with Malvani Police Station, Brihanmumbai, on furnishing P.R. Bond of Rs.25,000/- [Rupees Fifty Thousand only] with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (C) The applicant shall report to Malvani Police Station on the first Monday of every month between 10 a.m. and 12 noon, during the pendency of trial;
- (D) 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;

- (E) 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.

8. 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.

9. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

10. The applicant is permitted to furnish cash security of Rs.25,000/- for a period of four weeks.

11. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)