

(This order is corrected as per speaking to the minutes of the order dated 14.08.2024)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1983 OF 2024**

Nikhil Ratnakar Divase	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Amit Icham a/w. Mr. Chaitanya Purankar for applicant (through video-conferencing).

Mr. Mayur S. Sonawane, APP for respondent-State.

**CORAM : MANISH PITALE, J.
DATE : 08th AUGUST, 2024**

P.C. :

1. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant has filed this application as he was arrested on 23.05.2023 in connection with FIR No.0190 of 2023 registered on the same date at Police Station Koparkhairane, District Navi Mumbai for offences under Sections 363, 376, 376(2)(n), 323 and 504 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. In this FIR, there are five accused persons of whom, co-accused Chetan Shivarkar was granted bail by order dated 14.06.2024, passed in Bail Application No.2146 of 2024.

4. The FIR was registered on the statement of the informant as she alleged that the applicant and his friends met her, after she had caused FIR

to be registered against her mother, sister and other relatives on 06.04.2023 under the provisions of the IPC and the Protection of Children from Sexual Offences Act, 2012 (POCSO). The applicant allegedly told the informant that she could accompany him as he would treat her like a younger sister and that he would take care of her. It is alleged that the applicant brought the informant to a room in a society and thereafter, on 11.04.2023, he forcibly had sexual intercourse with her.

5. The informant further alleged that in April 2023, the applicant brought his two friends i.e. co-accused Vitthal Pangare and Chetan Shivarkar to the room. It is further alleged that thereafter, the applicant again assaulted her and forced himself on her, further alleging that the aforesaid two friends also forced themselves on her. It is then stated that the wife of applicant alongwith his two children joined them in the aforesaid room. There were fights between the applicant and his wife during which period the applicant allegedly assaulted the informant. Subsequently, on 04.05.2023, the informant escaped from the room and eventually, approached the police for registration of FIR on 23.05.2023.

6. The learned counsel for the applicant, at the outset, submitted that this Court has already granted bail to the co-accused Chetan Shivarkar, holding that *prima facie*, the present FIR appeared to have been registered on the basis of false implication by informant and as a counterblast to FIR dated 10.05.2023, registered against the co-accused Raj Kadam under Sections 363 and 354 of the IPC as also under the provisions of the POCSO Act, since the said Raj Kadam is a friend of the informant.

7. It is submitted that the findings rendered in the said order granting

bail to the co-accused Chetan Shivarkar, ought to inure to the benefit of the applicant also. Specific reliance is placed on the statement of witness Pushpa Shivarkar i.e. the owner of the aforesaid room, which was taken on rent by the applicant, as also statement of the wife of the applicant recorded during the course of investigation. It is submitted that the said witness Pushpa Shivarkar has specifically stated that the applicant took the room on rent on 07.04.2023 and came to reside with his wife and children, which completely contradicts the informant's claim that on 11.04.2023, she was sexually assaulted in the aforesaid room, while the wife and children of the applicant had joined much later. It is further submitted that after the wife of the applicant had caused the FIR dated 10.05.2023 to be registered against the informant's friend Raj Kadam, she threatened the wife of the applicant that she would falsely implicate the applicant and others. It is further submitted that the applicant has remained behind bars for more than an year and therefore, this Court may consider granting bail to the applicant.

8. On the other hand, the learned APP submitted that specific allegations of sexual assault have been made against the applicant with dates and chronology of events specified in the statement of informant. It is submitted that in the face of such specific allegations made against the applicant, ingredients of offences registered against the applicant are clearly made out. On this basis, it is submitted that the application deserves to be dismissed, particularly because the applicant cannot claim parity with co-accused Chetan Shivarkar, who is enlarged on bail.

9. This Court has perused the statement of the informant, leading to registration of FIR. Even according to the informant, she escaped from the aforesaid room and the clutches of the applicant on 04.05.2023. But, the

FIR came to be registered on 23.05.2023 i.e. after about 20 days. In the interregnum, as per the material available on record, on 10.05.2023, the wife of applicant had caused the said FIR to be registered against Raj Kadam, who is said to be a friend of the informant. It is specifically stated by the wife of the applicant that the said Raj Kadam alongwith the applicant and his other friends, used to come and sometimes stay overnight in the aforesaid room, which the applicant had taken on rent. FIR dated 10.05.2023 was registered at the behest of the wife of the applicant on a suspicion that the said Raj Kadam was responsible for disappearance of the minor daughter of the applicant for a few hours, when she suffered injuries also. On that basis, offences under Sections 363 and 354 of the IPC as also provisions of POCSO Act were registered against Raj Kadam.

10. It is specifically stated by the wife of the applicant that when the said Raj Kadam was arrested in the context of said FIR dated 10.05.2023, the informant reached the police station and shouted in a threatening tone that she would implicate everybody.

11. The statement of the landlady of the room i.e. witness Pushpa Shivarkar shows that according to her, the applicant took possession of the said room on rent on 07.04.2023 and he came there alongwith his wife and two children. The said witness is an independent witness, who has stated the aforesaid fact and this contradicts the version of the informant, who claims that she was alone brought by the applicant in the aforesaid room in April 2023, when specific incident of sexual assault took place on 11.04.2023. Further, the statement of witness Pushpa Shivarkar indicates that according to her, when she saw a girl, who apparently fits the description of the informant alongwith a boy in the said room, she asked the

applicant to vacate the room. It is further indicated that thereafter, the applicant indeed vacated the room.

12. The aforementioned narration of events by the witness Pushpa Shivarkar, who is the landlady of aforesaid room, when read with the statement of the wife of applicant, indicates a chronology of events that contradicts the claim made by informant in her statement, which led to registration of FIR. It is crucial that in the interregnum, on 10.05.2023, the aforesaid FIR was registered against Raj Kadam, who is stated to be a friend of the informant. It is even more significant that when anticipatory bail application of the said Raj Kadam pertaining to the present FIR came up for consideration before the Sessions Court, the informant gave her no objection. It appears that Raj Kadam has been arraigned as accused in the present case, as he is named as being a person accompanying the applicant after the informant had registered the FIR against her own mother and relatives.

13. This Court is of the opinion that a *prima facie* case is made out by the applicant in his favour in the light of the aforementioned contradictions that are discernible from the material on record. In that light, registration of FIR after 20 days of vacating the room and allegedly escaping from clutches of the applicant, coupled with the fact that the present FIR was registered after the earlier FIR dated 10.05.2023 was registered at the behest of the wife of applicant against the said Raj Kadam, demonstrates that the present application deserves to be allowed. In any case, the applicant has remained behind bars for a period of more than one year.

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

- (i) The applicant shall be released on bail in connection with FIR No.0190 of 2023 dated 23.05.2023 registered at Police Station Koparkhairane, District Navi Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount.
- (ii) The applicant shall report to Police Station Sinhgad Road, District Pune City on first Monday of every month between 11:00 a.m. and 01:00 p.m, during the pendency of the trial. The applicant shall co-operate for expeditious disposal of the trial and attend the proceedings on every date, unless specifically exempted by the trial court.
- (iii) The applicant shall not contact the informant by any modes of communication and he shall not meet her personally during the course of trial.
- (iv) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.
- (v) The applicant shall inform the trial court about his contact number and residential address immediately upon being released on bail and update the same in case of any change.

15. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The application is disposed of.

(MANISH PITALE, J)