

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2146 OF 2024**

Chetan Chandrakant Shivarkar ... Applicant
vs.
The State of Maharashtra and another ... Respondents

Mr. Satyam H. Nimbalkar a/w. Mr. Vaibhav More, Mr. Yash Saxena, Mr. Abhishek Arote and Mr. Harshwardhan Pawar for applicant.

Mr. Kiran C. Shinde, APP for respondent No.1-State.

Mr. Linkan Hasure, PSI, Koparkhairane Police Station.

CORAM : MANISH PITALE, J.

DATE : 14th JUNE, 2024

P.C. :

1. Heard learned counsel for the applicant and the learned APP for respondent No.1-State.

2. The applicant is one of the accused persons concerning FIR No.0190 of 2023 dated 23.05.2023 registered at Koparkhairane Police Station, District Navi Mumbai for offences under Section 363, 376, 376(2)(n), 323 and 506 read with Section 34 of Indian Penal Code, 1860 (IPC).

3. There are five accused persons of whom, the applicant is accused No.2. It is the case of the informant that while she had moved into the flat with accused No.1, the applicant alongwith accused No.4, came to the flat in an inebriated condition and thereafter, committed forcible sexual intercourse with her. It appears that the aforesaid incident happened some time in April, 2023. FIR was registered on 23.05.2023.

4. The learned counsel for the applicant invited attention of this Court to the documents filed alongwith the application and he submitted that the sequence of events, as discernible from the documents on record, would demonstrate that the allegation of forcible sexual intercourse has been made against the applicant in a general manner and that there is sufficient material on record to show that the applicant caused the FIR to be registered as a counterblast to FIR dated 10.05.2023 registered at the behest of the wife of accused No.1. It is alleged that in the said FIR, accused No.3 in the present case was arrayed as one of the accused persons and he was arrested. Since the informant was associated with accused No.3, she had threatened that if accused No.3 was indeed arrested, she would rope in everybody concerned in a criminal case with accused No.1. On this basis, it is indicated that the applicant has been falsely implicated. Much emphasis is placed on the fact that the flat in which the incident is said to have taken place, is owned by the father of the applicant, wherein accused No.1 had started residing with his wife and children.

5. It is further submitted that the informant herself claimed that after she had caused the FIR to be registered on 06.04.2023 against her own parents and sister at Koparkhairane Police Station for offence under Sections 370, 370A, 377, 376(2)(n) of IPC and Sections 4 and 5 of the Protection of Children from Sexual Offences Act, 2012, the accused Nos.1 and 5 had brought her from Navi Mumbai to Pune in the flat in which the accused No.1 was residing. In her statement, the informant herself stated that she resided in the said flat from 06.04.2023 till 04.05.2023, whereafter she moved out and started residing with accused No.5. Yet, the FIR was registered belatedly on 23.05.2023, while in the interregnum, the aforementioned FIR dated 10.05.2023 was registered against accused No.3 at the behest of the wife of accused No.1.

6. Attention of this Court was also invited to the statement of the mother of the applicant recorded during the course of investigation, wherein she stated that when she visited the flat on 03.05.2023, she saw the informant and another person residing there and that she told them to leave the flat, which they eventually did. By referring to such material, it is indicated that the applicant has been falsely implicated, only because of his association with accused No.1 and there is no specific role ascribed to him. It is submitted that the applicant has remained behind bars since 23.05.2023 i.e. for more than one year. On this basis, it is submitted that this Court may allow the present application.

7. On the other hand, the learned APP submitted that in her statement, the informant had specifically named the applicant and she had stated that he had committed forcible sexual intercourse with her in the aforesaid flat. The theory of the applicant having been falsely implicated or the present FIR being counterblast, are matters of conjecture and the material filed alongwith the chargesheet, sufficiently demonstrates the role of the applicant in the present case, thereby indicating that he does not deserve to be released on bail. It is further submitted that if the applicant is released on bail, there is every possibility of the informant being threatened.

8. This Court has considered the sequence of events that can be made out from the statement of the informant herself and the other material available on record. While the informant has claimed that she came from Navi Mumbai to the said flat in Pune with accused Nos.1 and 5, after having registered FIR against her own parents and sister on 06.04.2023, the wife of accused No.1 had stated that the informant came to the flat alongwith her associate on 01.05.2023.

9. The informant has made a specific allegation against accused No.1 as to the date and time when he allegedly committed forcible sexual intercourse with her i.e. on 11.04.2023 at about 11:30 p.m. Insofar as the applicant before this Court is concerned, there is a general statement that he committed forcible sexual intercourse in an inebriated condition alongwith accused No.4. There are no specifics to the allegation. Apart from this, the informant has not made any further allegation against the applicant.

10. According to the informant, she was residing in the flat from 06.04.2023 to 04.05.2023. Thereafter, she shifted and moved out with accused No.5. Having escaped from the clutches of accused No.1 and having moved out of the flat, which belonged to the father of the applicant herein, there is no explanation why the informant chose to approach the police with her grievance in respect of the present FIR on 23.05.2023 i.e. after about 20 days.

11. It is relevant that in the interregnum, on 10.05.2023, the wife of accused No.1 had caused the FIR to be registered against accused No.3 for allegedly having kidnapped her minor daughter and sexually abused her. The statement of the wife of accused No.1 recorded during the course of investigation in the present case, shows that according to her, when the FIR dated 10.05.2023 was registered against accused No.3 and he was likely to be arrested, the informant in the present case had reached there and created hue and cry, threatening to register a case and involving everyone, in the event accused No.3 was arrested. The material on record shows that, in fact, the accused No.3 was indeed arrested in the context of FIR registered on 10.05.2023 and subsequently, he was released on bail on 11.08.2023. It is

also relevant to note that the informant appeared before the Sessions Court and gave no objection for granting anticipatory bail to accused No.3 in the present case, as a consequence of which he was granted relief.

12. This is the backdrop in which the informant caused the subject FIR to be registered on 23.05.2023. *Prima facie*, the aforesaid sequence of events gives credence to the contention raised on behalf of the applicant that the present FIR can be said to be a counterblast, as per the threat given by the informant after accused No.3 was arrested, in the context of FIR dated 10.05.2023, registered at the behest of the wife of accused No.1.

13. Apart from this, the statements of the wife of accused No.1 and the mother of the applicant do indicate that the informant came to the subject flat in the beginning of May 2023 as opposed to her claim of having reached there on 06.04.2023. The involvement of the applicant perhaps stems from his friendship with accused No.1 and the fact that at his behest, his parents gave permission to accused No.1 to stay in one of the rooms of the flat on rent.

14. Having considered the sequence of events and the material on record and in the light of delay in registration of FIR, as also the fact that the applicant has remained behind bars since 23.05.2023, a case for bail is made out by the applicant.

15. 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 Koparkhairane Police Station,

District Navi Mumbai for offences under Section 363, 376, 376(2)(n), 323 and 506 read with Section 34 of IPC, on furnishing PR Bond of ₹ 50,000/- (Rupees Fifty Thousand only) and one surety in the like amount.

- (ii) The applicant shall report to Koparkhairane Police Station, District Navi Mumbai 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 informer, 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 release on bail and update the same in case of any change.

16. 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.

17. The application is disposed of.

(MANISH PITALE, J)