

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

CRIMINAL BAIL APPLICATION NO. 687 OF 2024

Sarawana Dhanavel Harijan	...Applicant
Versus	
State Of Maharashtra and Anr.	...Respondents

**WITH
CRIMINAL BAIL APPLICATION NO. 2619 OF 2024**

Sarawana Tangrajan Harijan	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Ms. Shabnam Shaikh a/w Mushahid Khan, Advocate for the Applicants.

Mr.A. A. Naik, APP for the Respondent – State.

Ms. Apurva Gupte, Appointed Advocate for Respondent No.2.

CORAM	:	N. J. JAMADAR, J.
DATE	:	4th SEPTEMBER 2024

PC.:

1. Heard Ms.Shaikh, the learned Counsel for the Applicants, Mr.Naik, the learned APP for the State, and Ms.Gupte, the learned Counsel appointed to espouse the cause of the Respondent No.2.

2. The applicants, who are arraigned in CR No.467 of 2022 registered with Sewree Police Station, Mumbai, for the offences punishable under Sections 377, 354C, 292 and 201 read with

Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), Sections 66E and 67A of the Information Technology Act, 2000 (“IT Act”) and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (“the POCSO”), have preferred these applications to enlarge them on bail.

3. Stephen Nadar, the co-accused is the brother of the Lawrence Nadar.

4. The gravamen of indictment against the applicants and the co-accused Stephen Nadar, Ramesh Supriyan Harijan and Satish Harijan is that, the applicants and the co-accused had surreptitiously prepared obscene videos of the females in their private moments. Lawrence had found a pendrive containing the obscene videos in his house. Those videos in the pendrive were transferred by Lawrence to his desktop/computer.

5. In the quarrel which had ensued on 20th August 2022, Sarawana Dhanavel Harijan, the Applicant in BA/687/2024, forcibly snatched the mobile phone of Lawrence Nadar, which contained the obscene videos allegedly recorded by the co-accused. The applicant Sarawana Dhanavel Harijan had allegedly deleted the said contents and re-formatted the mobile phone handset and thereby destroyed the evidence.

6. During the course of investigation it transpired that, co-accused Ramesh Supriyan Harijan, who was residing in the room above the room of the victim “L”, then a 17 year old girl, had facilitated the recording of videos of the victim in her private moments, by the co-accused. The investigation further revealed that videos of three more female victims were taken while they were bathing and changing clothes. The prosecution further alleged that, Sarawana Tangrajan Harijan, the Applicant in BA/2619/2024 and co-accused Satish Harijan had also sexually assaulted a 28 year old male by subjecting him to intercourse against the order of nature.

7. Ms.Shaikh, the learned Counsel for the Applicants, submitted that so far as Sarawana Dhanavel Harijan, the Applicant in BA/687/2024, the only allegation is that of causing disappearance of evidence. Evidently, no allegation of sexual exploitation of any victim has been made against Sarawana Dhanavel Harijan. Inviting the attention of the Court to the statements of Lawrence Nadar and Smt.Jenny Nadar, the wife of Lawrence Nadar, Ms.Shaikh would urge that, at best, the applicant Sarawana Dhanavel Harijan can be alleged to have taken away mobile phone handset of the Lawrence Nadar, in the course of an altercation, which had occurred after the

alleged discovery of the recording of the videos of the females in their private moments.

8. As regards, the role of Sarawana Tangrajan Harijan, Ms.Shaikh would urge that the incident of alleged sexual exploitation of the male victim had occurred prior to two years of the registration of the offences. The said victim had never reported the matter to police. Attention of the Court was invited to the history recorded by the medical officer which indicates that the incident of sexual exploitation had occurred prior to two years. Ms.Shaikh further submitted that, in fact, the pendrive was found at the house of Lawrence Nadar, the brother of co-accused Stephen Nadar. The allegation that the applicant Sarawana Tangrajan Harijan was involved in recording the said videos is based on surmises and conjectures.

9. In opposition to this, Mr.Naik, the learned APP, submitted that there is a strong prima facie case against the applicants. In addition to the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 (the Code), there are statements of witnesses recorded under Section 164 of the Code, 1973 which clearly incriminate the applicants. Attention of the Court was invited to the statement of male victim under Section

164 of Cr.P.C. and that of the girl, who was then 17 years of age. Thus, having regard to the role attributed to the applicants and the gravity of the offences, the applicants do not deserve to be enlarged on bail.

10. The said victim has implicated co-accused Ramesh Harijan, who has been enlarged on bail.

11. Ms.Gupte, the learned Counsel appointed to espouse the cause of victims, submitted that there are specific allegations of commission of an offence punishable under Section 377 of the Penal Code, 1860 against Sarawana Tangrajan Harijan. Those allegations against Sarwana Tangrajan Harijan find corroboration in the statement of the male victim recorded under Section 164 of the Code and the latter's medico-legal examination. Therefore, the applicant Sarwana Tangrajan Harijan does not deserve to be enlarged on bail.

12. Ms.Gupte further submitted that a numbers of victims have stated that they found their obscene videos in the pendrive found in the house of Lawrence Nadar. All the victims have stated that the applicants and the co-accused were found roaming around together. Thus, the involvement of the applicants in the act of

recording of the videos of the women in their private moments, is also *prima facie* made out.

13. I have carefully perused the report under Section 173 of the Code, and the documents annexed with it. I have also perused the statements of the witnesses recorded under Section 164 of the Code, 1973.

14. While releasing co-accused Ramesh Supriyan Harijan on bail, this Court had observed, *inter alia*, as under:-

“10. Evidently, the incident of sexual exploitation of a male friend of Sarvanand, by co-accused Sarvanand and Satish, had occurred prior to two years. *Prima facie*, the applicant has no nexus with the said incidents and, therefore, the offence under Section 377 of the Penal Code cannot be attributed to the applicant.

11. Secondly, as regards the offences under Sections 66E and 67A, the role attributed to the applicant is that of facilitating the recording of videos by the co-accused from his room. The statement of victim “L” *prima facie* indicates that the videos were taken from the room which was in the occupation of the applicant for a while. The learned Counsel for the applicant attempted to draw home the point that the said video was allegedly recorded in the month of February, 2001 by which time the applicant had already vacated the said room. I am afraid, at this stage, the said issue cannot be delved into elaborately.

12. Nonetheless, the situation which emerges is that the offence under Section 354C, which can be attributed to the applicant, entails punishment which may extend to three years and it is bailable. Offence under Section 12 of the POCSO Act also entails punishment which may extend to three years. Likewise Section 66E of the IT Act provides punishment of three years for violation of privacy. Section 67A of the IT Act entails punishment for a term which may

extend to five years and for subsequent conviction, the punishment may extend to seven years.

13. The applicant has been in custody since 6th September, 2022. Investigation is complete for all intent and purpose. The charge-sheet has been lodged. At this stage, the genesis of the occurrence cannot be lost sight of. Lawrence, who is the brother of co-accused Stephen, allegedly found a pendrive in his home, of which co-accused Stephen Nadar was also an occupant. The said pendrive allegedly contained the offending videos.

14. In the aforesaid view of the matter, especially having regard to the allegations that the applicant had facilitated the recording of videos, particularly of victim "E", by allowing the co-accused to use his room, which may fall within the dragnet of the offences under Section 354C of the Penal Code and Section 12 of the POCSO Act and entail punishment which may extend to three years and the applicant has already been in custody for more than one year and three months, I am inclined to exercise the discretion in favour of the applicant. The apprehension on the part of the prosecution can be taken care of by imposing stringent conditions."

15. In the light of the aforesaid observations, if the roles attributed to the applicants are appraised, *prima facie* the accusation against Sarawana Dhanavel Harijan falls in the dragnet of the offence punishable under Section 201 of the Penal Code, 1860. Sarawana Dhanavel Harijan had allegedly snatched away the mobile phone of Lawrence Nadar and when the said mobile phone was ultimately returned to Lawrence Nadar, the videos were deleted and the phone was reformatted.

16. The witnesses have stated that the mobile phone handset changed hands and was eventually returned to Lawrence by his aunt. In this view of the matter, I find substance in the submission of learned Counsel for the applicant Sarawana Dhanavel Harijan that the accusation against him stands on a different footing.

17. Sarawana Dhanavel Harijan has been in custody since 7th August 2023. Supplementary charge-sheet has been lodged against him. Investigation is practically complete. In the backdrop of the nature of accusation against Sarawana Dhanavel Harijan, further detention of the applicant Sarawana Dhanavel Harijan does not seem warranted. I am, therefore, persuaded to exercise discretion in favour of the applicant, Sarawana Dhanavel Harijan.

18. Qua Sarwana Tangrajan Harijan, the allegations are in two parts; first, the sexual exploitation of 28 year old male victim, by subjecting him to intercourse against the order of nature; second, the recording of the videos of the females in their private moments. On the first count, the statement of the male victim, recorded under Section 164 of the Code, *prima facie* makes out an offence punishable under Section 377 of the Penal Code, 1860. On the second count, i.e. recording of obscene videos, by and large, the allegations proceed on similar lines as against Ramesh Harijan,

who has been released on bail. With regard to the said allegation the reasons which weighed with this Court in releasing Ramesh Harijan on bail, apply with equal force to the claim of the applicant Sarwana Tangrajan Harijan for bail.

19. It is necessary to note that the alleged sexual exploitation of 28 year old male victim had occurred two years prior to the lodging of FIR. It does not appear that the said victim had reported the matter to police. The element of delay may have a bearing on the veracity of the allegations.

20. The applicant Sarwana Tangrajan Harijan has been in custody since 7th September 2022. Offences punishable under Section 354C of the Penal Code and Section 12 of the POCSO Act entail punishment which may extend to 3 years. The applicant Sarwana Tangrajan Harijan has been in custody since 2 years. Having regard to the nature of the accusation, the number of witnesses the prosecution may required to examine and the number of the accused, it is unlikely that the trial can be concluded within a reasonable period.

21. I am, therefore, inclined to exercise discretion in favour of the applicant Sarwana Tangrajan Harijan as well.

22. Hence the following order:-

: O R D E R :

- (i) Applications stand allowed.
- (ii) Applicants be released on bail in CR No.467 of 2022 registered with Sewree Police Station, Mumbai, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicants shall attend Sewree Police Station, Mumbai, on the first Monday of every alternate month between 10.00 am. to 12.00 noon for the period of two years or till conclusion of the trial, whichever is earlier.
- (iv) The applicants shall not contact the first informant or any of the victims or any of the witnesses or the absconding accused in any manner whatsoever or give threat or inducement or promise to the victims or first informant or any of the witnesses or persons acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any Police Officer.
- (v) The applicants shall not enter the limits of Sewree Police Station till the conclusion of the trial, except for attending the Police Station on the specified days.

(vi) The applicants shall furnish the details of their permanent address and contact number to the Investigating Officer and intimate the change, if any, therein.

(vii) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

Applications stand disposed.

(N. J. JAMADAR, J.)