

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

CRIMINAL BAIL APPLICATION NO. 3138 OF 2024

Parmatma Satiram Chauhan	...Applicant
Versus	
State Of Maharashtra and Anr.	...Respondents

Mr. Tohid Shaikh i/by Anjali Patil, Advocate for the Applicant.

Mrs. Mahalakshmi Ganapathy, APP for Respondent-State.

CORAM	:	N. J. JAMADAR, J.
DATE	:	29th AUGUST 2024

PC.:

1. Heard the learned Counsel for the Applicant and the learned APP for State.

2. The applicant, who is arraigned in Special Case No. 660 of 2023 arising out of C.R. No.76 of 2023 registered with Thane Nagar Police Station, Thane, for the offences punishable under Sections 363, 376 of the Indian Penal Code, 1860 and Sections 4, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"), has preferred this application to enlarge him on bail.

3. In fact, this is a second application for bail. The first application, being Bail Application No.3666 of 2023, was

disposed as withdrawn as this Court was not inclined to entertain the prayer for bail. The Court had requested the learned Special Judge seized with Special Case No.660 of 2023 arising out of C.R. No.76 of 2023 to make an endeavour to commence and conclude the trial as expeditiously as possible. Asserting that, there has not been any substantial progress in the trial, the applicant has approached this Court, again.

4. The gravamen of indictment against the applicant is that the applicant and the 15 year old daughter of the first informant, were neighbours. The applicant allegedly befriended the victim and enticed her away. On 3rd May 2023 at about 11:30 pm, the applicant kidnapped the victim and took her to village Chhatral, Gandhinagar, Gujarat State. The applicant rented a room. The applicant allegedly had sexual intercourse with the victim forcibly. On 16th May 2023, the applicant and the victim were traced. The applicant came to be arrested on 17th May 2023.

5. Mr.Shaikh, the learned Counsel for the Applicant, submitted that the victim was in a relationship with the applicant. Inviting the attention of the Court to the Medical Examination Report of the victim which indicates that, there was

no force for the sexual act, the learned Counsel for the applicant would urge that the allegations of aggravated penetrative sexual assault and rape cannot be said to have been *prima facie* made out. Mr. Shaikh further submitted that the applicant has been in custody since 17th May 2023. Charge has yet not been framed, despite direction by this Court for expeditious conclusion of the trial. Therefore, the applicant deserves to be enlarged on bail.

6. Mrs. Ganapathy, the learned APP, resisted the Application. It was submitted that the applicant, despite being a married person, sexually exploited the 15 year old child. A very strong *prima facie* case of kidnapping and subjecting the child to aggravated penetrative sexual assault has been made out. Therefore, the applicant cannot be released on bail.

7. As noted above, the first bail application came to be withdrawn as this Court was not inclined to entertain the prayer for bail. Therefore, on first principles, there is no propriety in considering the prayer for bail afresh.

8. Nonetheless, the material on record *prima facie* squarely incriminates the applicant. The victim was 15 years old. The applicant was a married man. There is material to indicate that

the applicant had kidnapped the victim. The Medical Examination Report *prima facie* indicates that the applicant had sexual intercourse with the victim repetatively.

9. To add to this, in the statement of the victim recorded under Section 164 of Criminal Procedure Code, 1973, the victim has categorically stated that the applicant had kidnapped her and sexually exploited, her despite her resistance, by giving threat of causing harm to her.

10. In the aforesaid view of the matter, the applicant does not deserve bail.

11. Hence the following order:

ORDER

(i) Criminal Bail Application stands rejected.

(ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations.

(N. J. JAMADAR, J.)