

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3388 OF 2024

Sanjay Sitaram Jagtap	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Aniket Nikam a/w Mr. Dushyant Digambar i/b Mr. Sumit Patil for Applicant

Mr. Prasanna P. Malshe, APP for Respondent No.1-State

Mr. Nilesh Navale a/w Mr. Somnath Kale a/w Mr. Yash Aggrawal for Respondent No.2

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 19, 2024

P.C. :

1. Heard Mr. Nikam, learned counsel for the applicant, Mr. Malshe, learned APP for State and Mr. Navale, learned counsel appearing for Respondent No.2(first informant).

2. The applicant was arrested on 23.04.2024 in connection with FIR No. 779 of 2024 dated 08.04.2024 registered at Shil Daighar Police Station, District- Thane, for offences under Sections 376, 376 (2) (n) and 506 (2) of the Indian Penal Act, 1860 (IPC) and Sections 4, 7 and 12 of the Prevention of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The informant in this case is related to the applicant and in her statement during the registration of the FIR, she claims that from September, 2022 till the year 2023, the applicant had forcibly sexually exploited her. This led to registration of the aforesaid offence for the reason that at the time of first incident, the applicant was aged about 16

years and few months.

4. The investigation was completed and charge-sheet was filed in June, 2024. The applicant has remained behind bars since 23.04.2024.

5. Learned counsel for the applicant submits that in the statement of the informant recorded under Section 164 of the CR.P.C., on 03.05.2024, she has made no allegations against the applicant other than stating that he had mentioned his whats app status in a particular manner. There is no reference to any act of forcible sexual intercourse on the part of the applicant. This is in contradiction to her statement recorded during the course of the investigation under Section 161 of the Cr.P.C.

6. The learned counsel appearing for respondent No.2 has tendered an affidavit wherein she has stated that she has no objection to the bail application being allowed. The said affidavit is taken on record.

7. This Court is not placing much emphasis on the affidavit of respondent No.2, as the present case concerns allegations involving offences under the POCSO Act also. But, it is to be noted that the informant who would ultimately be the star witness for the prosecution in the present case, in her sworn statement before the Magistrate under Section 164 of the Cr.P.C. has contradicted her own version as stated during the course of investigation by the police. There is no reference in any forcible sexual intercourse by the applicant. There is a vague reference to a sexual act between two as the informant claims that she was in love with the applicant.

8. There is substance in the contention raised on behalf of the applicant that in the face of such material, it can be said that the applicant has a strong case on merits. Therefore, this Court is inclined to allow the application.

13. In view of the above, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with F.I.R. No. 779 of 2024 dated 08.04.2024 registered at Shil Daighar Police Station, District- Thane on furnishing P.R. Bond of Rs.50,000/- and one or two sureties in the like amount;
- (B) The applicant shall not contact the informant in any manner during the pendency of the trial.
- (C) 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;
- (D) The applicant shall cooperate with the proceedings before the trial Court and he shall attend each and every date, unless specifically exempted by the trial Court;
- (E) Upon being released on bail, within two weeks, the applicant shall communicate the details of his contact numbers and residential address to the trial Court and update the same in case of change.

9. 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.

10. The application is disposed of.

(MANISH PITALE, J.)