

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

CRIMINAL BAIL APPLICATION NO. 4287 OF 2024

Manish Raju Dulgach

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Prem K. Pandey a/w. Navkar Jain and Harshal Savla for
Applicant.

Mr. Ashish I. Satpute, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 11 DECEMBER 2024

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.792 of 2020 registered at Virar Police Station, under sections 376(2)(i) of the Indian Penal Code and under sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. This is the third time the applicant has approached this Court for his release on bail. Initially, he had filed Criminal Bail Application No.2128 of 2021. It was withdrawn unconditionally. On the next occasion, he had preferred Criminal Bail Application

No.389 of 2024. It was also withdrawn as is reflected in the order dated 23.04.2024 passed by this Court. However, on that occasion, the directions were issued to the Trial Judge to take up the trial on urgent basis. The Court was informed that the next date was 02.05.2024, therefore, the directions were issued to conclude the trial within four months from 02.05.2024. Not only that the trial has not concluded; even the recording of evidence has not started. The charges were framed on 11.04.2023. Thereafter, there is absolutely no progress in the trial in spite of clear directions from this Court. The applicant was arrested on 08.09.2020. At that time, he was 22 years of age. More than four years have passed without any progress in the trial; in spite of directions from this Court. By the previous order, liberty was granted to the applicant to approach this Court again for his release on bail if the trial was not concluded within four months from 02.05.2024. Pursuant to that liberty, he has approached this Court again for his release on bail. In this situation, I am entertaining this application.

3. Learned APP opposed this application on merits. He submitted that, fresh directions be issued to the Trial Court to

conclude the Trial within a reasonable period.

4. Sufficient time has passed and no steps were taken either by the investigating agency or by the learned prosecutor in the Trial Court to start recording of the evidence. Therefore, I do not find any substance in the submission of the learned APP.

5. Learned counsel for the applicant produced a copy of the photograph showing close relation between the victim and the applicant. Learned APP also has seen the same. A copy of that photograph is kept in an envelope. The Registry is directed to keep that copy in a sealed envelope with the record of this bail application. From the photograph there appears to be substance in the submission of the learned counsel that the victim and the applicant were on friendly terms; though, the victim has not stated so in her statement.

6. The F.I.R. is lodged by the victim's mother on 08/09/2020 vide the C.R.No.792 of 2020 with Virar Police Station. She has stated that on 24.05.2020, she saw that her daughter aged 15 years 5 months (victim in this case) was climbing down from

the third floor. She was looking scared, but she did not tell anything. After some time, the informant saw the applicant climbing down from the terrace. He was in the employment of the informant's family. On 02.06.2020, the applicant left the job. On 08.09.2020, the victim was looking disturbed. On enquiry made by the informant, the victim told her that the applicant had established forcible physical relations with her on 24.05.2020. On this basis the F.I.R. was lodged.

7. The investigation was carried out. The statement of the victim was recorded. She has stated that the applicant had told her that he was in love with her. On 24.05.2020, after telling her that he loved her, he established forcible physical relations with her. She could not shout because he had gagged her mouth. The same act was repeated on 01.06.2020. The applicant had threatened the victim not to disclose this incident to anybody else. But the victim told about the incident to her tuition teacher and maternal aunt. The charge-sheet contains statements of her teacher and the maternal aunt which repeated the same description as described by the victim. Thus, there is some material against the present

applicant.

8. Learned counsel for the applicant submitted that, it was not possible that the applicant would have used force because the alleged incident had taken place on the terrace of the house and the mother of the victim was in the house.

9. All these arguments would be decided during trial. There is some substance in the argument that the victim and the applicant could be on friendly terms. However, that will not indicate that the victim had given consent. Even otherwise, consent of a minor victim in the case under POCSO Act or U/s.376(2)(i) of the I.P.C. would be immaterial. However, the fact remains that the applicant is in custody since 08.09.2020. More than four years have passed. There is absolutely no progress in the trial and it does not appear that the trial will conclude in near future. The applicant was 22 years of age at the time of his arrest. Considering this situation, bail can be granted to the applicant with some conditions; so that, there is no harassment caused to the victim.

10. Hence, the following order :

O R D E R

- i) In connection with C.R.No.792 of 2020 registered at Virar Police Station, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Applicant shall not leave Palghar district till the trial is concluded; except with permission of the Trial Court.
- iii) The applicant shall not cause any harassment to the victim and her family and shall not tamper with the evidence.
- iv) The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)