

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

CRIMINAL BAIL APPLICATION NO.1059 OF 2023

Sayed Amir Samih Sayed Mansur Hussain
Alias Shiroj Khan ...Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

***WITH
INTERIM APPLICATION NO.657 OF 2024
IN
CRIMINAL BAIL APPLICATION NO.1059 OF 2023***

XYZ ...Intervener

IN THE MATTER OF :

Sayed Amir Samih Sayed Mansur Hussain
Alias Shiroj Khan ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms. Sana Raees Khan a/w Mr. Aditya Parma and Ms. Juhi Kadu for the Applicant in BA/1059/2023.

Ms. Kranti T. Hiwrale, A.P.P for the Respondent – State.

Ms. Neha M. Patil, for the Intervener/First Informant in IA/657/2024.

PSI- Mr. Mangesh Kadam from Oshiwara Police Station, Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 16th DECEMBER 2024

P.C. :

1. Heard learned counsel for the parties.
2. This is the second bail application preferred by the applicant seeking his enlargement on bail in connection with CR. No.393 of 2018 registered with the Oshiwara Police Station, Mumbai, for the alleged offences punishable under Sections 376, 377, 392, 354, 355, 324, 328, 342, 344, 347, 506 r/w 34 of the Indian Penal Code and under Section 66E of the Information Technology Act.
3. Learned Counsel for the applicant primarily seeks bail on the premise of long incarceration i.e. the applicant is in custody for more than 6 years and 3 months. She further states that till date charge has not been framed in the said case and that the trial is not likely to conclude in the immediate near future.

4. Learned counsel for the Intervener/First Informant opposes the bail application. She submits that the facts do not warrant the applicant being enlarged on bail.

5. Perused the papers. The first bail application of the applicant was withdrawn by the learned counsel for the applicant, after arguing for some time, when the Court was not inclined to enlarge the applicant on bail. Accordingly, the first bail application was dismissed as withdrawn and the same is recorded in the order dated 27th August 2019. The present bail application is preferred after almost five years. According to the complainant aged 27 years, she connected with the applicant on the social media App 'happn' and later on 'Instagram', after which she started chatting on phone and WhatsApp with the applicant. It is the complainant's case that when she went to the house of the applicant on 16th June 2018 to celebrate Eid with the applicant, the applicant spiked her sheerkurma and sexually assaulted her. She has alleged that the applicant confined her during the period from 16th June to 25th August 2018 at his house, where she was repeatedly

sexually assaulted by the applicant, during the said period. According to the complainant, though the applicant's mother was at home during the said period, she did not come to rescue her. She has alleged that the applicant wanted to sell her, however, she escaped. Pursuant thereto, the complainant lodged the aforesaid C.R. being CR. No.393 of 2018 with the Oshiwara Police Station, Mumbai. It is not in dispute that the applicant is in custody for more than 6 years and 3 months. Till date, charge has not been framed in the said case. It appears that the prosecution intends to examine as many as 20 witnesses. It is the applicant's case, that the relations between him and the complainant were consensual, inasmuch as, the complainant resided with him and his mother for about 3 months. Be that as it may, we do not wish to go into the merits of the case, inasmuch as, the application ought to be allowed on the ground of long incarceration of the applicant.

6. Learned counsel for the applicant has tendered an undertaking of the applicant dated 15th December 2024 duly affirmed before the Jailor, Talaja Central Prison, Navi Mumbai. The applicant

in the said undertaking has undertaken not to enter the jurisdiction of Oshiwara Police Station, Mumbai, till the conclusion of the trial proceedings in Sessions Case No.100 of 2019. The applicant has also undertaken to abide by the undertaking and the conditions that may be imposed upon him by this Court whilst enlarging him on bail. The said undertaking is taken on record.

7. Learned APP as well as the learned counsel for the Intervener/First Informant state that the first informant does not reside in Oshiwara, Mumbai, any more and is a resident of Pune.

8. In view of the aforesaid, having regard to the long incarceration of the applicant, the application is allowed and the applicant is enlarged on bail, on the following terms and conditions:-

ORDER

(i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station, on the first Saturday of every month from 10:00 a.m. to 1:00 p.m. till the conclusion of the trial;

(iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant shall not enter the jurisdiction of Pune City, till the conclusion of the trial ;

(vi) The applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court and shall not seek any adjournment;

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9. The application is allowed in the aforesaid terms and is accordingly disposed of.

10. In view of the disposal of the aforesaid bail application, nothing survives for consideration in the intervention application being Interim Application No.657 of 2024. The same is also disposed of accordingly.

11. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE , J.