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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 571 OF 2024

Santosh Butailal Verma

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondent

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- Ms. Anjali Patil, Advocate for Applicant.
- Ms. Shilpa Gajare Dhumal, APP for Respondent No. 1 – State.
- Ms. Chaitrali Deshmukh, Advocate for Respondent No.2.
- Mr. Sambhaji Mane, PSI, Kalyan Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 12, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R. No. 499 of 2021 registered with Kalyan Police Station for offences punishable under Section 376, 376(2)(n), 373 of Indian Penal Code, 1860 read with Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 with Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956. Applicant was arrested on 20.09.2021 and he is incarcerated for 3 years 5 months and 22 days.

2. The factual matrix of the present case reveals that FIR dated 18.09.2021 came to be registered by the Supervisor of Child Welfare Committee, Mankhurd while prosecutrix aged 16 years and 6 months was admitted to the Institution on 03.09.2021. Prosecutrix's case is that as her mother was a T.B. patient she alongwith her siblings were

kept at her aunt's house and later on due to severe financial crisis her own mother and one of her mother's close friend induced her into prostitution for earning money. Further as father of prosecutrix being alcoholic used to beat them, prosecutrix alongwith her mother and siblings shifted to Titwala where Applicant who was a friend of prosecutrix's mother arranged for their accommodation in one of his house / room. It is prosecutrix's case in her statement that during that time and stay Applicant allegedly on multiple occasions forcefully had physical relations with her. However later when she refused to continue having physical relations with the Applicant, he asked them to vacate his house which was provided to them. Hence prosecutrix alongwith her mother and siblings rented a room in the same vicinity. It is alleged that Applicant then introduced one person called Sachin to the prosecutrix's mother who also had multiple forceful physical relations with the prosecutrix. It is stated by her that her mother in collusion with other accused persons in the present crime including the Applicant induced her into prostitution for money during the period from 01.10.2020 to 01.01.2021.

3. Ms. Patil, learned Advocate for the Applicant would submit that due to financial constrains prosecutrix was induced in such activities by her mother since the year 2019 which is borne out from the record of the case and not denied by the prosecutrix. She would submit that prosecutrix has not provided specific dates and time of the

alleged incidents over a period of considerable time which makes the prosecution case highly questionable. She would submit that prosecutrix herself has admitted that after they left their house the Applicant helped them by arranging accommodation for them. She would submit that the Applicant asked them to vacate the house when they failed to pay rent to him and they vacated the house and shifted to another rented room in the vicinity.

3.1. She would submit that it is admitted by prosecutrix herself that due to financial crisis her mother induced her into compromise which was never objected to by her. Hence she would submit that if Applicant had any physical relations with prosecutrix then the same be viewed in consideration with her prior circumstances. She would submit that Applicant was 16 years old at the time of the alleged incidents and was well aware of her actions and consequences of the same.

3.2. She would submit that prosecution case does not show or allege any threat, force or violence from the Applicant hence it is crucial to consider that prosecutrix had sufficient time and ample opportunity to seek assistance, which she failed to do so. She would submit that the alleged incident with Applicant is of October 2020 however the FIR is lodged in September 2021 and the delay is of almost a year which is unexplained which further raises suspicion on

the part of prosecution.

3.3. She would submit that prosecutrix has no where in her statement in the FIR or in her statement recorded under Section 164 stated that Applicant forced her into prostitution. Hence charges levelled in the chargesheet *prima facie* do not constitute an offence under the Immoral Traffic (Prevention) Act, 1956. She would submit that the present case is nothing but a complete afterthought after her mother's demise in the interregnum against the Applicant due to her prior grudge against the Applicant.

3.4. She would submit that Applicant has deep roots in the Society. She would submit that Applicant was arrested on 20.09.2021. He is incarcerated for the past 3 years 5 months and 22 days pending trial and he has no criminal antecedents. She would submit that investigation being completed, chargesheet being filed, conclusion of trial in the near future is doubtful. Hence she would urge the Court to allow the present Application.

4. Ms. Gajare – Dhumal, learned APP for the Respondent No. 1 – State opposes the bail Application. She would submit that Applicant under the pretext of arranging accommodation for the prosecutrix and her family forcefully developed physical relations on multiple occasions against her wish. She would submit that prosecutrix in her Section 164 statement has affirmed the same. She would submit that when she

refused to the Applicant's demands subsequently he compelled them to vacate the house which he had provided to them. She would submit that offences alleged by the prosecutrix are very serious in nature. She would submit that chances of Applicant re-offending himself cannot be ruled out and thus would urge the Court to reject the Application.

5. Ms. Deshmukh, learned Advocate for Respondent – No.2 would adopt the submissions made by the learned APP. She would submit that it is crucial to consider prosecutrix's age at the time of the incident. She would submit that Applicant under the pretext of helping her and her family took a chance and developed forceful physical relations against her wish. She would submit that in the statement under Section 164 it is stated that Applicant explicitly demanded physical relations with prosecutrix in lieu of rent, despite knowing that she was a minor and continued to engage in forceful physical relations with her on multiple occasions. Hence she would submit that considering the gravity of the crime the Court should reject the present Application.

6. I have heard, Ms. Patil, learned Advocate for the Applicant, Mr. Karmakar, learned APP for Respondent No. 1 – State and Ms. Deshmukh, learned Advocate for Respondent No. 2 and with their able assistance perused the record of the case.

7. It is *prima facie* seen from the record of the case and the prosecutrix's own statements that her own mother induced her into prostitution for money. The prosecutrix has given the names and details of the incidents with the persons. It is seen from the statement of one Yuvraj Kamble - a close friend of prosecutrix appended at page No. 129 that prosecutrix on her mother's instructions was involved in such activity. It is *prima facie* seen that when he persuaded the prosecutrix to lodge a complaint against her mother under the provisions of POCSO, the prosecutrix refused to do so and informed him that her mother was already indicted in two previous POCSO cases and if she would file a complaint, then her mother would be arrested once again and therefore she continued engaging in the acts which itself show and reflect that prosecutrix was well aware of her actions and decisions.

8. On perusing the chargesheet it is *prima facie* seen that the only role attributed to the Applicant is that he allegedly developed forceful physical relations with the prosecutrix in lieu of the house / accommodation provided by him to them. However it is seen that FIR came to be registered on 18.09.2021, there is a delay of almost 1 year from the alleged date of the first incident in October 2020 alleged by the prosecutrix. The aforesaid timeline and the fact that during the interregnum not even once the prosecutrix raised any complaint or grievance whatsoever against the Applicant is unexplained though she

admits to have had several multiple incidents with him. From the record it is *prima facie* seen that no allegation against Applicant of force or violence and inducing her into prostitution is made. That allegation of the prosecutrix is against her mother and she also describes certain specific incidents during which she was forced by her mother. Possibility of Applicant having forceful physical relations which is the allegation can be proved by the prosecution at the stage of trial. However, the question before me is whether in the aforementioned facts Applicant's further incarceration is warranted?

9. The Supreme Court has held in a series of judgments and orders that in situations where the under-trial prisoner / accused persons have suffered incarceration, rather long incarceration for a considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

10. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents

which are required to be considered in such cases.

11. Considering the aforementioned facts and circumstances, absence of criminal antecedents and Applicant's incarceration for 3 years 5 months and 22 days pending trial persuade me to consider Applicant's case. Concerns expressed by the learned Advocate of prosecutrix can undoubtedly be taken care of by imposing strict conditions.

12. In view of the above *prima facie* observations and facts delineated herein above Applicant before me is entitled for bail. Bail Application is allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail in CR No. 499 of 2021 registered with Kalyan Police Station, on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iii) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (iv) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail, to the concerned Police Station and also to the trial Court;
- (viii) Applicant shall not make any attempt to re-associate with the prosecutrix in any manner either through any device or in-person; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

13. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence uninfluenced by the present order and strictly in accordance with law.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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