

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1259 OF 2024

Rahul Bhikaji Padghan

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Ms. Chandni Chawla a/w Ms. Anuya Deokar for Applicant
- Mr. R.M. Pethe, APP for State
- Mr. Sushil Kumar Tiwari, learned Advocate (appointed) for Respondent No. 2
- Ms. Gayabai Maroti Gharke, PSI, Central Police Station, Ulhasnagar-3

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 26, 2025

P.C.:

1. Heard Ms. Chawla, learned Advocate for Applicant; Mr. Pethe, learned APP for State and Mr. Tiwari, learned Advocate (appointed) for Respondent No. 2.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with Crime No. 49/2019 registered with Central Police Station, Vithalwadi for the offences punishable under Sections 376, 504 and 506 of the Indian Penal Code, 1860 (for short "**IPC**") and under Sections 4, 8 and 12 of the Protection of Child from Sexual Offences Act, 2012 (for short, "**POCSO Act**").

3. FIR in the present case has been read and relied upon by the learned Advocates of both sides. It is filed on 16.02.2019 by the prosecutrix. Prosecutrix was apprehended by police rather railway police on 13.02.2019 when she had gone to attempt to commit suicide at Vithalwadi Railway Station. She narrated the spate of incidents and the reasons as to why she took that step to the police. FIR is lodged on 16.02.2019 three days thereafter. Tenure of the incidents in question are from June 2018 to some time prior to 13.02.2019. As stated in the FIR according to the prosecutrix's own statement which is recorded she states that she befriended the Applicant who was one of her neighbours and had come to stay in their neighbourhood along with his family in the past one and half to two years prior to filing of the FIR. She states that she knew the Applicant and he used to regularly follow her to school as well as classes and attempted to talk to her and come close to her.

3.1. She states that in June 2018, date which cannot be recalled by her, at sometime in the evening at 7:00 p.m. when she was passing in front of Applicant's house, he held her and dragged her inside the house. She states that there was no one present in the house. She states that she tried to shout but the Applicant put his hand on her mouth forcibly and threatened her that if she shouted, he would kill her. She states that thereafter the Applicant forcibly

outraged and ravaged her modesty, after which she started crying due to pain. She states that Applicant thereafter consoled her but also threatened her before sending her home. She states that because of the said threat administered to her by the Applicant after that incident, she was scared and she did not disclose the incident to anybody. She states that immediately on the following day, Applicant followed her and asked about her well being on which she informed him that she was having discomfort. Thereafter Applicant went to the medical shop and brought some tablets and gave it to her and asked her to have them which she took from him. Thereafter she states that the Applicant on a regular basis had several incidents of sexual intercourse with her in his house. The dates of those several incidents are not stated by her.

3.2. Thereafter she states that sometime in November 2018 while she was proceeding to her tuition classes, the Applicant met her and took her along with him to Navin Guest House near Furniture Market, Ulhasnagar 3 and once again they both had sexual intercourse together. Thereafter she states that time and again (वेळवेळी) Applicant used to take her to the same guest house and forcibly commit himself on her and he also gave her contraceptive pills after every act forcibly. She states that she went to the guest house at least 5 to 6 times with the Applicant. Once again the specific dates are not recalled or stated.

Thereafter the precursor incident to the filing of FIR occurred on 13.02.2019 is stated in the FIR.

3.3. She states that Applicant confronted her at about 2:00 p.m. on 13.02.2019 and told her to come and meet him at the usual lodge. She states that she refused to meet him since her impending 10th standard examination was on the anvil. Due to this Applicant removed her hall ticket which was with her and took it and told her that if she would come on the following day to the guest house only then he will return her hall ticket to her. She states that Applicant kept the hall ticket with him and left the place. She then states that she was extremely upset by the incident, did not know what to do, and wanted to do something sinister to her own life. Because of this, she went to Vithalwadi Railway Station to attempt suicide. There she was apprehended by the Police and taken to the railway police and thereafter her brother and father were summoned. FIR came to be filed three days thereafter. The statements of the brother and father are recorded on 20.02.2019 which are appended at page Nos. 119 and 121 of the Application. Applicant's statement under Section 164 Cr.P.C. is also recorded on 20.02.2019

4. Ms. Chawla, learned Advocate for Applicant has drawn my attention to the Section 164 statement of the prosecutrix recorded on 20.02.201 which is four days after filing of the FIR which is

appended at page No. 123 of the Application. Looking at the FIR in question which has been delineated herein above since all 3 Advocates have referred to and relied upon it in the course of their submissions, Section 164 statement when *prima facie* seen is substantially at variance with what is stated in the FIR rather *prima facie* I find it to be concised and cryptic. What is stated in the FIR four days ago does not find mention in Section 164 statement with respect to the alleged incidents in question. The tenure of visits to the guest house is also reduced and it stated to be once or twice by the prosecutrix, rather the guest house which is named in the FIR is not the same guest house which is named in her Section 164 statement and completely new guest house with address is mentioned. What is more intriguing is the question of what precisely triggered the prosecutrix to take action on 13.02.2019 which in itself is at variance. A *prima facie* examination of the Section 164 statement reveals that the prosecutrix stated that when she refused to comply with the Applicant's demand to meet him on the following day of 13.02.2019, he took away her hall ticket. The prosecutrix has further stated that he subsequently tore (फाड़णे) the hall ticket. The immediate incident which followed thereafter is also critical because the prosecutrix then states that she went to her classes which is at complete variance with the statement in the FIR.

5. Mr. Pethe, learned APP has after going through the FIR and Section 164 statement of the prosecutrix has based his submissions on the minor age of the victim. He would emphatically argue that the age of the prosecutrix victim is 15 years and she was a student of 10th standard. It is evident from the FIR that the Applicant exerted threats upon the prosecutrix thereby subjugating her to commit acts that were forcibly imposed upon her. He would submit that consent of the prosecutrix in the present case would be completely irrelevant in view of her age. He would submit that this Court should consider the circumstances that compelled the prosecutrix to attempt suicide on 13.02.2019 as she was driven to such an extreme by the acts of the Applicant. He would submit that the acts of the Applicant as *prima facie* evident from the FIR are of a threatening and extortionary nature. He would persuade the Court to neglect the variance in the Section 164 Statement of the prosecutrix and consider the gravity of the crime and reject the Application for bail.

6. Mr. Tiwari, learned appointed Advocate for the prosecutrix has adopted the submissions made by the learned APP and for brevity they are not delineated herein. He persuaded the Court to consider the gravity of crime committed by the Applicant over a substantial tenure which can be seen from the FIR. He would submit

the Section 164 statement is rather supportive of all that is stated in the FIR and if both statements are read holistically, they will clearly show that the prosecutrix was under coercive and threatening influence of Applicant and it is only when she wanted to take the escape route, the only plausible view which arose in her minor mind was to attempt to commit suicide on the fateful day but fortunately she was saved and prevented from taking that extra step.

7. With the able assistance of learned Advocates of both sides, I have perused the record of the case.

8. Though the submissions made by the prosecution and learned appointed Advocate are *prima facie* profound, in so far as the Court is to consider the Bail Application, the *prima facie* relevant material on record needs to be seen. In a given case to a certain extent for the purpose of corroboration the Court sometimes heavily relies upon medical evidence also but the facts in the present case as can be *prima facie* elucidated from the FIR juxtaposed with the Section 164 statement of the prosecutrix do not compel me to go any further. I must exercise caution that matters cannot be argued on emotions and facts emerging from the record before Court have to be seen. The tenure of the incident rather several incidents is *prima facie* seen from the record. There is no doubt that the age of the prosecutrix neither her consent would not matter as she being below 18 years of age.

Rather what is intriguing the Court is the fact that over a substantial period of time during which multiple incidents have happened, silence of the prosecutrix speaks volume. From June 2018 upto Feb. 2019 *prima facie* it is seen that there were several multiple incidents between the Applicant and the prosecutrix. Though in the FIR it is stated that all incidents were forcefully and forcibly undertaken under threat but *prima facie* it is difficult to believe because during all these incidents, it is the prosecutrix's case that she was also given tablets / contraceptive pills at all times after the incidents took place. That apart it is seen that the incidents did not take place or are continued to a singular place but the Applicant and the prosecutrix have been together in the Applicant's house at multiple times and in two guest houses also at multiple times. In this regard, attention is invited to the decision of this Court in the case of ***Sunil Mahadev Patil v. The State of Maharashtra***¹ and ***Anirudha Radheshyam Yadav v. The State of Maharashtra***².

8.1. In the case of ***Sunil M. Patil (supra)***, the age of the prosecutrix was also 15 years. In that case the Applicant was also a young offender and in the present case, Applicant was aged 28 years old on the date of the offence. Reference in that case is invited to the observations made by this Court while considering the issue of consent

1 Bail Application No. 1036 of 2015 decided on 03.08.2015 (Coram : Mrs. Mridula Bhatkar, J.)

2 2020 All MR (Cri) 1351

as a mitigating circumstance. This Court referred to the case of *S. Varadarajan v. State of Madras*³ wherein the Supreme Court had distinguished the provisions of Section 361 in that case. The Court noted that though the case of *S. Varadarajan (supra)* was decided in the year 1967 when the women were not enjoying the freedom which today they have, despite that the Supreme Court took a pragmatic view and acquitted the accused. This Court noted that now a days we come across such cases everyday. This Court noted that if a girl is minor between the age group of 15 to 20 years and if it can be safely inferred that her consent was only obvious then it is the mitigating circumstance. *Prima facie* in the present case if it is the prosecutrix's case that she was forced on each and every occasion, then the tenure of the multiple incidents in question would probably not find favour with her case at the inception.

8.2. In furtherance to the above Court has laid down certain specific guidelines after taking into consideration relevant cases as also the ethos and development of the age of the young offenders in the Indian Society in general. In paragraph Nos. 8, 9, 10, 11 and 12 of the above decision, this Court dealt with the offence of rape *qua* the age of the parties and on overall consideration summed up certain

3 AIR 1965 SC 942

factors for consideration of bail. Paragraph Nos. 8 to 12 of the decision in the case of ***Sunil Patil (supra)*** are reproduced herein under:-

"8. It is to be noted that the case of S. Varadarajan was decided in the year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon'ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan. Now we come across such cases everyday. If a girl is a minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstance. Some trial Courts dealing with such Bail Applications, especially after Nirbhaya case, started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern.

9. In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous. Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail.

10. The offence of rape can be distinguished on the basis of the intention of the accused. There are incidents of rapes committed by gang like the case of Nirbhaya or Maya Thagi or Mathura which cannot be forgotten by Indian Society. So also rape committed in a savage manner or repeatedly by a single accused. There are some instances of rape which take place as a man wants to satisfy his lust and animal within him overpowers his reason. There are instances of rape where a man and a woman both are in love with each other and get involved into sexual relationship due to either physical or psychological need and in such type of rape, there is no violence which exists in other types of rape.

11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever

the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.

12. *The overall considerations while deciding such applications can be summed up as -*

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.*
- (ii) Whether the act is violent or not.*
- (iii) Whether there are antecedents or not.*
- (iv) Whether the offender is capable of repeating the Act or not.*
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.*
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.*
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.*

8.3. From the above factors which are summed up by the Court in the present case, it is seen that the Applicant and prosecutrix have committed the acts repeatedly on multiple times over a period of more than seven months at different locations. Prosecutrix has also consumed contraceptive pills given by the Applicant, as such she would therefore be conscious and aware of her acts. With respect to the likelihood of threats, intimidation, and/or tampering with material

evidence by the Applicant if released on bail, such grievances can always be addressed by imposing stringent conditions.

8.4. As held by this Court in the case of *Anirudha R. Yadav (supra)* , it is seen that in so far as the offences punishable under Sections 4, 6 and 8 of the POCSO Act are concerned, it may be stated that the provisions of this law are though stringent in nature, in the give facts of the case they would not deter the Court to grant or refuse bail in order to secure the ends of justice.

9. 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 are required to be considered in such cases.

10. In the present case before me it is crucial to consider whether the act between the parties is violent or otherwise and in the present case it is not. Another mitigating factor is whether there are any criminal antecedents of the Applicant which in the present case are none. The aforesaid mitigating facts and Applicant's long

incarceration for 6 years and 9 days therefore persuades me to consider Applicant's case.

11. Assuming for the sake of argument that the allegations made by the prosecutrix in the FIR are true, the nature of the incidents occurring repeatedly and at various locations, therefore *prima facie* suggest a consensual relationship. Needless to state that complicity of the Applicant will be determined in the trial. Applicant has made out a case for grant of bail also in view of his long incarceration since 17.02.2019 which cannot be neglected by the Court apart from the *prima facie* observations made herein above.

12. In view of the above, present Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall not enter the territorial jurisdiction of Ulhasnagar Police Station, Central Police Station, Ulhasnagar; Vithalwadi Police Station and Hill Line Police Station till the conclusion of the trial. He shall not reside in the said jurisdictions until completion of trial;

- (iii) 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;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport, if any, within two weeks after being released on bail with the Trial Court;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; Applicant shall not make any attempt to re-associate with the prosecutrix in any manner either through a device or in-person. Applicant is directed not to enter the jurisdiction of the Police Station where the prosecutrix is residing until the completion of trial, save and except to attend the Police Station as directed herein;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail cancellation of this order.

13. It is clarified that the 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 its own merits and evidence in accordance with law.

14. This Court appreciates the assistance rendered by Mr. Sushil Tiwari, learned Advocate appointed through the Legal Aid to espouse the cause of the prosecutrix. His fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances.

15. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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