

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1391 OF 2024

Wasim Shariff Shah

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

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- Mr. Amol Mhatre, Advocate for Applicant
- Ms. Rajeshree V. Newton, APP for Respondent No.1
- Ms. Aneesa Cheema, Advocate (appointed) for Respondent No. 2
- Mr. R.D. Toradmal, API, Mumbra Police Station, Thane

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2025

P. C.:

1. Heard Mr. Mhatre, learned Advocate for Applicant; Ms. Newton, learned APP for Respondent No. 1 - State and Ms. Cheema, learned Advocate (appointed) for Respondent No. 2 - prosecutrix.

2. Applicant - accused has filed the present Application for regular bail in connection with C.R. No. I-260/2023 registered with Mumbra Police Station, Thane for the offences punishable under Sections 376, 376(2)(n) and 507 of the Indian Penal Code, 1860 (for short, "**IPC**").

3. Respondent No. 2 - prosecutrix was 21 years old at the time of the incident. FIR is lodged on 11.03.2023 and tenure of the incident stated in the FIR is from 01.10.2022 to 28.02.2023. According to the prosecution case and from the statement of the first informant -

prosecutrix appended at page No. 18 of the Application, it is *prima facie* seen that prosecutrix has stated that she had befriended the Applicant who was 29 years old who was working in the same company called Basant Karkhana situated in Mac Company Compound, Sanjay Nagar, Mumbra, Thane. Thereafter, they developed a cordial relationship, grew close to each other, and are stated to have engaged in physical intimacy on at least four to five occasions until February 2023. The prosecutrix has stated that in the month of March 2023 upon realizing that she was pregnant, she confronted the Applicant. In response, the Applicant disclosed that he was already married and that his wife resided in a village in Uttar Pradesh. He assured the prosecutrix that he would visit his native place, seek consent from his wife as he was a Muslim and thereafter revert to her. Prosecutrix is also a Muslim. It is stated that the prosecutrix was convinced by the said assurance. However, subsequently the prosecutrix found the conduct of Applicant to be evasive whereupon she disclosed the details of the incidents to her mother and sister and with their assistance proceeded to lodge the present FIR.

4. Medico legal examination report of the prosecutrix is appended at page No. 80 of the Application. The history of the alleged incident given by the prosecutrix in the said report is *prima facie* contrary to her statement made in the FIR. The Section 164 statement of the

prosecutrix is recorded 10 days thereafter i.e. on 21.03.2023. Upon perusal of the same, it reveals an altogether different set of allegations as compared to those stated in the First Information Report as well as those recorded in the medico-legal examination report of the prosecutrix. In the statement recorded under Section 164 of the Cr.PC. before the learned Magistrate, the prosecutrix has alleged that she was threatened with disclosure of certain videos on Facebook which *prima facie* does not find mention in the original complaint lodged by her.

5. Ms. Cheema would respectfully urge the Court to consider the statements of the witnesses recorded namely the owner of the Karkhana and the co-worker, appended on pages 97 and 99 of the Application. *Prima facie* reading of the said statements reveal that the Applicant and the prosecutrix were admittedly in a relationship which is acknowledged by the prosecutrix herself except for the fact that the Applicant had concealed his marital status from her is what Ms. Cheema would persuade the Court to consider. However the dichotomy and the discrepancy as noted in the aforesaid statements *prima facie* lead to one conclusion that is, the relationship between the Applicant and the prosecutrix was consensual. There was no element of force or violence. Prosecutrix was 21 years of age at the relevant time and was fully cognizant of the nature, consequences and

import of her actions over a substantial period of time. That apart, the statement of the prosecutrix recorded in her medico-legal examination report reveals that both parties had engaged in a sexual relationship on multiple occasions. Though Ms. Cheema has canvassed the issue of promise to marry, however considering the dichotomy in the statements of the prosecutrix as reflected from the record, the case of the prosecution can be proved at the trial.

6. In view of the above *prima facie* observations and infirmities in the statements recorded by the prosecutrix and considering the fact that Applicant is incarcerated for the past 1 year and 11 months, I am of the opinion that Applicant can be released on bail. Hence, Bail Application is allowed 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) 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;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) 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.

7. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on

the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

8. This Court appreciates the assistance rendered by Ms. Cheema, learned Advocate appointed through the Legal Aid to espouse the cause of Respondent No. 2. Her 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.

9. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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