

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1902 OF 2024

Irfan Sabbir Shaikh

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Jyotiram S. Yadav, Advocate for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent No.1 - State.
- Mr. Abdul Hafeez Kotwala, Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 14, 2025

P. C.:

1. Heard Mr. Yadav, learned Advocate for Applicant; Mr. Kulkarni, learned APP for Respondent No.1 - State and Mr. Kotwala, learned Advocate for Respondent No.2 and perused the record.

2. Applicant is incarcerated since 23.08.2023 in connection with C.R. No.I-564 of 2023 registered by Respondent No.2 with Kashimira Police Station for offences under Section 376(2)(n) of the Indian Penal Code, 1860 (for short "**IPC**") readwith Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "**POCSO Act**").

3. Briefly stated, the prosecutrix is a divorcee having a minor son. Case of the prosecutrix is that she got acquainted to the Applicant in October 2022 as they were working in the same Company and

subsequently in February 2023 they became friends. It is prosecution case that on 20.02.2023, Applicant visited house of prosecutrix for helping her and thereafter stayed over there and on the same night, he forcibly established physical intimacy with prosecutrix. Thereafter Applicant apologized to her and proposed her for marriage and the prosecutrix accepted the proposal, pursuant to which Applicant was staying alongwith prosecutrix and her son and repeatedly established physical intimacy with prosecutrix. On 21.06.2023, when prosecutrix returned from her work, she saw the Applicant sexually assaulting her minor son and thereafter Applicant apologised for his behaviour and hence she permitted him to stay with them. Thereafter on 24.06.2023, prosecutrix received a phone call from her father who informed her about the arrest of Applicant by Kandivali Police Station. When prosecutrix and her father enquired with Kandivali Police Station, they learnt about an FIR being registered against Applicant for cheating and rape. Thereafter, on 08.08.2023 prosecutrix approached the Kashimira Police Station and lodged the present FIR.

4. Mr. Yadav, learned Advocate for Applicant would submit that investigation in the matter is completed and charge-sheet has been filed before the Trial Court and trial will take a long time to conclude. He would submit that the unexplained delay in lodging of the FIR is also an important factor which needs consideration of the

Court. On the issue of another FIR being lodged against Applicant, he would submit that owing to some misunderstanding his ex-girlfriend had lodged the same with Kandivali Police Station and as Applicant had filed Anticipatory Bail Application in connection to that FIR, he was staying at some isolated place and the prosecutrix asked him to reside with her at her place, resultantly on 24.06.2023 Applicant was arrested from the prosecutrix's home. He would submit that Applicant has been granted bail by the Sessions Court at Dindoshi in that case. He has also drawn my attention to the statement of the first informant in that case which is recorded by prosecution and is a part of the charge-sheet in support of his case.

4.1. He would submit that the allegations regarding sexual assault on the minor son are completely false and baseless as Applicant was residing at prosecutrix's residence alongwith her father and the child and assuming it to be true for the sake of argument then prosecutrix would not have waited for 2 months for lodging the FIR. Hence he would submit Applicant is falsely arraigned in the crime as he refused to marry prosecutrix who is elder in age to him, with a motive to pressurize him for marriage.

4.2. In support of his submissions, he has referred to and relied upon the decisions of the Supreme Court in the cases of *State of*

*Rajasthan Vs. Balchand @ Baliay*¹ and *Gudikanti Narasimhulu and Ors. Vs. Public Prosecutor*² wherein it is held that bail is a rule and jail is an exception and that requirement of bail is merely to secure attendance of prisoner for trial and it is the duty of the Court to release the accused on bail wherever possible unless there are strong grounds for supposing that such person would not appear in trial. In view of his above submissions, he would urge the Court to enlarge the Applicant on bail in connection on any terms and conditions.

5. *PER CONTRA*, Mr. Kotwala, learned Advocate appointed by the Legal Aid to espouse the cause of Respondent No.2 has opposed the Bail Application by stating that Applicant has criminal antecedents and if he is enlarged on bail then there is a possibility of tampering with evidence and also influencing the witnesses related with the case. In this regard, he has tendered across the bar 5 NCs dated 06.11.2023, 16.09.2023, 26.05.2024, 12.06.2024 and 03.08.2024 filed by prosecutrix with Kashimira Police Station against the relatives of Applicant as they were intimidating her to withdraw her complaint. Next, he would submit that as offence is grievous in nature under the POCSO Act, Applicant's Bail Application may be rejected.

1 (1977) 4 SCC 308

2 (1978) 1 SCC 240

6. I have heard the rival submissions of all the Advocates. The issue in the present case stems from the fact even after Complainant i.e. prosecutrix saw the Applicant on 21.06.2023 committing an irrelevant act of assaulting her minor son as stated in the complaint she still kept quiet and allowed Applicant to stay with her in her house. It is seen that although the incident took place on 21.06.2023, she has filed complaint/FIR only on 08.08.2023. The investigation is completed in the matter and chargesheet has been filed before the Trial Court. After hearing the parties on 07.01.2025, this Court has directed the learned APP to obtain report from the Investigating Officer with respect to the fact that whether Complainant - prosecutrix she has remarried as said fact was brought to the notice of this Court. The Investigating Officer has filed a report dated 14.01.2025 which states that it is true that Complainant has remarried on 16.02.2024 with a person called Mr. Shah Jaman s/o Khayyam Javed. The marriage is also registered and they both are residing in Room No. 808, Building No. 02, D.B. Ozan Society, Kashimira, Miraroad(E), Thane. Learned Advocate for Complainant – prosecutrix states that son of the complainant – prosecutrix is also residing with her. Hence, in view of the above observations and findings it is clear that there was no reason whatsoever for the Complainant – prosecutrix to wait for a period of more than 2 months to register the

FIR / complaint. It is seen that some other Complainant had earlier filed FIR on 04.02.2023 against the Applicant. In fact the same Complainant is now proposing to marry the Applicant and she is present in Court today.

7. In view of the delay in filing the complaint by the present Complainant – prosecutrix and the observations made above, the applicant has made out an arguable case for grant of bail. Hence, Application stands allowed in terms of prayer clause “A” of the Application.

8. In view of the above, following order is passed:-

(i) Applicant – Irfan Sabbir Shaikh, in connection with C.R. No.I-564 of 2023 registered by Respondent No.2 with Kashimira Police Station for offences under Section 376(2) (n) of the Indian Penal Code, 1860 (for short "IPC") readwith Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") is ordered to be released on bail on furnishing P.B. and S.B. in the sum of Rs. 25,000/- (Rs. Twenty Five Thousand Only) with one or two sureties to the like amount;

(ii) Applicant shall not enter the jurisdiction of Kashimira Police Station except only for the purpose of

attending the trial or reporting the Kashimira Police Station;

(iii) Applicant shall not enter the vicinity of the residence of Complainant – prosecutrix where she is currently residing along with her husband and her son;

(iv) Applicant shall report to the Kashimira Police Station once every month on the first Monday of the month between 10.00 a.m. to 12:00 p.m.;

(v) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport, if any, with the I.O. within two (2) weeks from his release date;

(vii) Applicant shall not influence the witnesses or tamper with the evidence in any manner;

(viii) 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, as applicable;

(ix) Applicant shall not misuse his liberty in any manner or to influence the witnesses in any way; and

(x) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

9. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]