

Ajay

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

BAIL APPLICATION NO. 2732 OF 2024

Ritik Suresh Millil

.. Applicant

Versus

State of Maharashtra and Ors.

.. Respondents

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- Mr. Rahul A. Siddiqui, Advocate for Applicant.
- Ms. Shilpa K. Gajare – Dhumal, APP for Respondent No.1 – State.
- Ms. Huma Akhtar Shaikh, Advocate Respondent No.2.
- Mr. Atmaram T. Kadam, PSI – Wadala T.T. Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2025

JUDGMENT:

1. This bail Application is filed under Section 439 of the Code of Criminal Procedure, 1973 (for short '**Cr.PC.**') for grant of regular bail by Applicant. He is incarcerated since 15.08.2023 in C.R. No.246 of 2023 for offences punishable under Sections 363, 376(2) (f) (j) (n) and 376(3) of the Indian Penal Code, 1860 (for short '**IPC**') and under Sections 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO**'). First Informant prosecutrix is the cousin sister of Applicant.

2. Date of incident is between April and May 2023. There are three incidents alleged by prosecutrix. Prosecutrix was 14 years

and 6 months old whereas Applicant – Accused was 20 years old on the date of incidents. Prosecutrix is an orphan. Three years prior to the incidents in question, she and her younger sister (two years younger) came to live with the family of the Applicant. Applicant's father and prosecutrix's father are brothers. Place of incident is the residential house of Applicant being Room No.311, Building No.5, MHADA Colony Bhakti Park, Wadala, Mumbai – 37. Prosecutrix, Applicant, Applicant's two elder brothers, younger sister of prosecutrix, Applicant's parents all resided together. The house comprises of one hall (14 feet x 8 feet), one kitchen (4 feet x 6 feet) and one bedroom (*ante* room (6 feet x 6 feet) FIR is lodged on 15.08.2023 by prosecutrix pursuant to which Applicant is arrested.

3. Prosecution case is that some time in the month of April 2023 on one afternoon at 3:00 p.m. when prosecutrix was sleeping in the hall and mother of Applicant was sleeping in the bedroom (*ante*-room), Applicant was present in the house. He at that time bolted the latch from the outside of the bedroom and slept near the prosecutrix and started touching her inappropriately. According to prosecutrix, he removed her jeans and clothes but because she was in deep sleep she did not realise anything. Thereafter Applicant ravished her modesty forcibly against her wish despite her protest and questioning and when she attempted to shout he forcefully shut her mouth with his hand and

after committing the act left the house. In the FIR, the prosecutrix further states that after 10 days thereafter in the month of May 2023 on two occasions, on finding the prosecutrix alone at home in the afternoon, Applicant had forcible sexual intercourse with her against her wish. According to prosecutrix, she kept quiet about the three incidents since she was scared and at the mercy of the Applicant's parents living in the house. Hence she did not reveal the incidents to anyone. Record shows that until July 2023, prosecutrix attended her 10th standard tuition classes regularly but thereafter stopped attending the classes. Resultantly one of her friend called Kinjal whose statement is recorded visited her house on 13.08.2023 to inquire about the reason for her long absence. Prosecutrix initially informed her that she was suffering from jaundice which was the reason for her absence but when she was seeing her off, she confided in her that she was pregnant and asked her help her in that situation after narrating the incidents with the Applicant. According to prosecution case, her friend Kinjal narrated her ordeal to her mother and father whose statements have also been recorded. They all decided to help the prosecutrix. Hence on the following day i.e. 14.08.2023 Kinjal met the prosecutrix at her house and informed her to meet her mother. The prosecutrix met the mother on 15.08.2023 and alongwith her proceeded to the Police Station to lodge her complaint. Prosecutrix's statement was

recorded on 15.08.2023 which is appended at page No.32 of the Application. She has narrated the aforesaid facts in her statement. Witness statements of her friend Kinjal and her mother and father are recorded on 21.08.2023 and appended at page Nos.38 to 41 of the Application. Statement of Applicant's mother is recorded on 31.08.2023 and statement of Applicant's elder brother is recorded on 02.09.2023. They are appended at page Nos.43 and 45 of the Application. In the meanwhile, Applicant was refereed to medical examination on 15.08.2023 and Applicant attended the KEM Hospital for medical counseling and examination. She was 10 weeks pregnant at that time and hence received medical counseling. On 17.08.2023 her statement was recorded by the Hospital Authorities / Medical Counsellor which is appended at page No.74 of the Application. In this statement, prosecutrix stated that in the month of April when all other members of the family had gone to work and in their absence when she was alone at home, at that time Applicant forcefully subjugated her and committed sexual assault on her. *Prima facie* when this statement is read, it is seen that in this statement there are three omissions namely prosecutrix has not stated about the time of the incident, she has stated that on the date of incident all other family members had gone for work and in their absence when she was alone at home (however in the FIR she states that Applicant's mother was at

home) and she has not stated about the two incidents repeated by Applicant in the month of May 2023. Another glaring omission is about the whereabouts of her younger sister who was 13 years old.

4. The aforesaid omissions are *prima facie* crucial because the statement recorded by the Medical Counselor in the Government Hospital is according to the narration of the prosecutrix within 2 days after filing the FIR.

5. The said statement also differs from the prosecutrix's own statement dated 15.08.2023 given to the Medical Officer on duty at 11:00 p.m. which records that Applicant was subjugated to three incidents forcefully, once in the end of April 2023 and twice in May 2023 of unprotected peno vaginal sexual intercourse by Applicant. In this statement, prosecutrix has stated that Applicant's mother was sleeping in the bedroom at the time of incident.

6. In the meantime thereafter, prosecutrix underwent MTP on 26.08.2025. She is presently housed in a rehabilitation center according to record placed before the Court.

7. Learned Advocate for the Applicant and for the prosecutrix would jointly submit that the prosecutrix has now filed affidavit dated 08.10.2024, original copy of which is appended at page No.221 of the Application stating that Applicant be enlarged on bail

unconditionally and she was making the said Affidavit without any force or pressure or coercion on her.

8. I have heard the learned Advocates across the Bar and perused the record of the case. Considering the spot panchanama of the place of incident and the aforesaid discrepancy noted in the statements of the prosecutrix recorded on 15.08.2023 and the statement given to the Medical Counselor on 17.08.2023 and the age of the Applicant, I am inclined to consider Applicant's case for grant of bail. Age of prosecutrix was 14 years 6 months 10 days months and Applicant was 20 years. Both lived in the same house for 3 years after prosecutrix moved in there alongwith her younger sister.

9. Learned Advocate for Applicant would submit that silence of the prosecutrix from April 2023 upto 13.08.2023 be considered as a mitigating factor because the prosecutrix was regularly attending her tuition classes upto mid July despite which she did not inform or confide about her condition to any person. He would submit that she was a student of 10th standard and regularly attending school and tuition classes upto 20th July 2023.

10. I have considered the above submission. On the prosecution side *prima facie* it is seen that statements of relevant witnesses ought to have been recorded. Out of the 9 witness

statements recorded seven witness statements are appended to the Application. Out of these 7 witness statements, 2 witness statements are of the aunt of prosecutrix i.e. mother of Applicant which is appended at page No.43 whereas witness statement of one elder brother of Applicant is appended at page No.45. Both these witness statements are inconclusive. According to the Applicant and his statement appended at page No.190 during his forensic medical examination, he has stated that he and the prosecutrix had consensual unprotected sexual intercourse with each other on multiple occasions.

11. The question before the Court that remains unanswered is why did the prosecutrix keep silent from April 2023 upto August 2023. It is seen that prosecutrix was a student of 10th Standard she was regularly attending her tuition classes upto 20.07.2023 according to her own statement. The only reason stated is that she was scared to reveal about the incidents.

12. Learned Advocate for the Applicant would persuade me to consider the age of the Applicant being 20 years old. He would submit that investigation is completed and charge-sheet is filed. He would submit that Applicant's parents and two elder brothers are residing in Mumbai since the year 2007. He would submit that considering the age of Applicant his further incarceration in prison would possibly lead him onto the criminal path. He would submit that considering

Applicant's age there is every likelihood that if he is enlarged on Bail, he would get a realistic chance to reform himself rather than keeping him in prison which would amount to a punitive and retributory punishment pending trial. He would submit that there is every chance that Applicant's parents and his two elder brothers would play an effective role to resurrect his future life, support him and guide him to lead a life as a good citizen.

13. Learned APP, Ms. Gajare – Dhumal would argue that act of Applicant is heinous in nature. She would submit that Applicant has taken advantage of the vulnerability of his own cousin sister and committed a horrendous act of a serious nature which qualifies as an act against the Society at large and one having the potential to shock the conscience of the society and erode trust in a sacred relationship. She would submit that Applicant would be a potential threat to influence witnesses in the case and tamper with evidence if released on bail. Hence she would submit that the Application be rejected.

14. Ms. Shaikh, learned advocate for the prosecutrix would draw my attention to the Affidavit of the prosecutrix giving her 'No Objection' and consent for grant of bail and persuade the Court to consider the record and submissions advanced by the Advocates.

15. From the record though there is some discrepancy observed in the statements of the prosecutrix regarding the happening of the incidents / multiple incidents, what intrigues the Court is whether further incarceration of the Applicant is required and if not then why? On one hand is the case of the prosecution and on the other hand is the age of the Applicant. Considering the age of prosecutrix and the difference in age between the prosecutrix and Applicant being 4 years only at the time of the incidents, there is every possibility that the nubile age of the parties may have led to multiple incidents. Silence at the time of incidents and immediately thereafter is somewhat deafening. However, silence of the prosecutrix until August 2023 when she was otherwise behaving normal is what intrigues the Court. There is also one theory propounded by her that she was dependent on the Applicant's family fully and hence she kept silent. However giving benefit of doubt to the prosecutrix for the same on the other side, I have the case of the Applicant before me. Applicant and prosecutrix were residing along with five other family members in the said Room No.311 namely Applicant's parents, Applicant's two elder brothers and younger sister of prosecutrix. Thus, there were in all seven family members residing together. Prosecutrix could have easily confided in her aunt who was like a mother figure to her. She did not do so. Though, Court is aware of the fact that delay in filing

FIR is not fatal to the prosecution case as there may be a cogent reason for the same, however I am impelled to consider the Applicant's case for further incarceration because of his young age. It is seen that Applicant's mother works as a house maid so also his father and both elder brothers are in service. In the statement of Applicant's mother appended at page No.43 she has stated that she works as a house maid whereas her husband and her three children including applicant are doing private jobs. From the statement of Applicant's brother, it is seen that prosecutrix's younger sister who is 2 years younger to her is also residing with them. The reference to prosecutrix's younger sister comes only in the statement of the brother of Applicant. Case of prosecutrix is that on all three dates of the incidents in question all family members were absent as they had gone out for work. She has not referred to the whereabouts of her younger sister in any of her statements which are recorded. The aforesaid discrepancy is clearly evident, considering that her younger sister could not be expected to go out for work or that she must be in the school.

16. As held by this Court in the case of ***Sunil Mahadev Patil Vs. State of Maharashtra***¹ it is true that a wrong doer is to be punished, guilty is to be convicted. However at the stage of bail, Court has to consider *prima facie* under what circumstances the offences are

1 BA No.1036 of 2015 - Decided on 03.08.2015

committed by the accused. The offence of rape can be distinguished on the basis of the intention of the accused. In the aforesaid judgment the learned Court summed up the ethos of relationship between young boys and girls aptly in paragraph No.11 of the said judgment which reads thus:-

“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.”

17. In view of my above *prima facie* observations borne out from the record, silence of Applicant and discrepancy noted herein above coupled with and considering the age of the Applicant, I am of the opinion that in the above facts further incarceration of the Applicant in prison would amount to giving him punishment before conviction. The Applicant's family is residing in Mumbai since the year

2007 at the said address in Wadala. Considering Applicant's age and if he is enlarged on bail Court is hopeful that Applicant's family will undoubtedly do their duty to make every effort and attempt to reform and aid the Applicant in leading a reformed life while on bail rather than keep him in prison and expose him to criminal outlook and life in prison. It is *prima facie* seen that the disadvantaged background of the prosecutrix being an orphan has exposed her to the vagaries of the situation in the present case.

18. However on the flip side, if a chance is given to the Applicant because of his young age by enlarging him on bail, there is a possibility that he will be remorseful and repent in retrospect. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformatory result rather than being punitive in nature. Undoubtedly the trial will determine the punishment for the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the under trial accused needs to be considered especially when age of the accused is young so that the accused gets an opportunity / or is given an opportunity to reform, rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused. By considering this Court is not stamping approval of any of the actions of Applicant

regarding the crime in question. Court is also equally conscious of the offence. In the present case, ages of the Applicant and the prosecutrix are very young. If the Applicant is incarcerated in prison further, there is every possibility that he might loose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison statistically shows that it exposes many youth to abuse. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why Court feels that any / every semblance of a chance towards a reformatory approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young offenders – accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can be at his home with his parents, elder brothers and the community which may have a positive impact on his mind.

19. I am of the opinion that incarceration of the Applicant in prison considering his young age is likely to worsen his likelihood of success in every sphere of society and it will expose him to abuse.

While granting bail in such facts there is a very thin line rather a faint line between punitive and reformatory approach and therefore in the facts of the present case delineated herein, I am inclined to grant bail to the Applicant on the following terms:-

- (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 report to the Investigating Officer of the concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first six months and thereafter as and when called;
- (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;
- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

- (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) Applicant shall not attempt to contact the prosecutrix either physically or by any electronic devices / means until the trial is completed and the verdict is delivered by the Trial Court; and
- (viii) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

20. 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 and the trial shall be adjudicated on its own merits in accordance with law.

21. Bail Application is allowed and disposed.

Ajay

[MILIND N. JADHAV, J.]

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