

Amberkar

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

CRIMINAL BAIL APPLICATION NO. 3675 OF 2024

Ghanshyam Maruti Chougule

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondent

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- Mr. S. Rao i/b Mr. Vinayak Reddy, Advocates for Applicant.
- Mr. Mahalakshmi Ganapathy, APP for Respondent No. 1 – State.
- Ms. Kanchan Chandak a/w Mr. Shashikant D. Chandak for Respondent No.2.
- Mr. S.R. Kanadkhedkar, PSI, Parksite Police Station – Present.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2025

JUDGMENT:

1. This Application is made under Section 439 of Code of Criminal Procedure, 1973 seeking regular bail in connection with C.R. No.324/2024 registered with Parksite Police Station for offences under Section 376(2)(i), 376 and 506 of Indian Penal Code, 1860 along with Section 6 of Protection of Children from Sexual Offences Act, 2012.

2. Notice to the Respondent No.2 – Victim was issued previously by another bench of this court and subsequently Ms. Kanchan Chandak came to be appointed as Legal Aid Counsel to espouse the cause of the victim and thus I have taken up the matter for hearing of 30.01.2025. The matter is fully heard in my chamber considering the facts and sensitivity of the issue.

3. The prosecution story stated in the FIR is that sometime in the month of May 2023 when the victim was residing with her parents and her mother was admitted to a hospital, the victim woke up to the traumatic realisation of being naked and being sexually assaulted by digital penetration by her father. It is stated that the Applicant – Accused used force of threat and violence to ensure the silence of the victim both in the short and long run.

4. Mr. Rao, learned Advocate for Applicant would at the outset submit that proceedings initiated against the Applicant are vexatious in nature and done in order to abuse the process of law. He would submit that facts would show that victim's mother and grandparents have tutored her to narrate a concocted story curated by them for their ulterior motives. He would submit that there are underlying disputes between Applicant and his wife which are *inter – alia* due to her extra – marital relationship and hence his wife is using their daughter as a leverage to secure her interests as Applicant is an impediment to the illicit relationship. He would further submit that the Applicant and victim has had strained relations since her childhood which got amplified when he refused to entertain a male friend of the victim in his residence. In order to rebel against the said incident she joined forces with her mother and acceded to her demand in order to implicate the Applicant.

4.1. He would draw my attention to the aspect of delay in filing the FIR which is writ large on the face of record and submit that the FIR has been filed after a delay of almost one year since the date / time of alleged incident, which is not even specified in the FIR. He would submit that such long delay is carefully thought out in order to refute the fact of absence of any sexual assault marks. He would state that every shred of material in support of the case of the victim has been curated later in time and only after filing of the FIR in order to make up an arguable case in order to falsely implicate the Applicant.

4.2. He would draw my attention to the FIR which is filed on 12.04.2024 to submit that the date of the alleged incident is sometime around in the month of May 2023, as alleged therein, a delay of 11 months post the alleged incident. He would submit that as per the statement of victim's mother, she gained knowledge about the alleged crime on 24.02.2023 which is after a span of 9 months had elapsed and for such a long period of time the behavior of the victim went unnoticed. It was only thereafter that the victim's mother after discussing the incident with her parents i.e. the maternal grandparents of the victim after two months thereafter which she persuaded the victim to file the FIR on 12.04.2024 – a delay of about 45 days after gaining knowledge of the incident. He would submit that even if the long delay on the part of victim could be attributed to the trauma she

may have experienced (which was only sufficient to delay the filing of FIR but to go unnoticed for a period of a year) due to the alleged incident, the silence on the part of her mother for a further period of two months was inexplicable. He would submit that the delay both on behalf of the victim and her mother points to the probability that there is something more sinister than what meets the eye, which the Applicant has aptly explained in his defence but the prosecution has failed to do so.

4.3. Lastly he would submit that the refusal on the part of the victim to undergo medical examination is another facet that corroborates the case of the Applicant and creates a further void in the prosecution case which if not rebutted by the prosecution would make highly improbable for prosecution to succeed in the trial and hence *prima facie* case is in favor of Applicant and he be enlarged on bail.

5. Ms. Ganpathy, learned APP appearing on behalf of Respondent – State would vehemently oppose the Application by pointing out the deficiency in the primary limb of Applicant's case – delay in confiding with a trusted adult as well as filing of FIR, both of which is attributable to the fact that during that time the victim was under trauma having endured such a distressing incident. She would draw my attention to the contents of the FIR in support of her submissions. She would further ardently submit that the offence alleged against the

Applicant is of a very serious nature which has potential to shock the conscience of a human, corrode the trust in a sacred relationship and have much more far reaching repercussions in civil society. She would submit that a person alleged to be involved in such a incident would be a threat to society at large and thus should not be set at liberty.

6. Ms. Chandak, Learned Advocate appointed to represent and espouse the cause of the victim would in the light of the arguments being advanced before me would deem it appropriate to deal with the aspect of delay in the initial stages of her arguments and the victim's medical condition. She would submit that the victim is under serious mental trauma which is the aftermath of the incident the trauma being such which subsists even after one and a half years after the incident. She would submit that one can only imagine the ordeal the victim must have undergone during the period immediately after the incident especially when she was threatened by her father residing with her who kept a constant watch on her to ensure that she did not reveal the incident to anyone. She would rely on the medical reports in support of her submissions which depict that the victim is diagnosed with '*Post Traumatic Stress Disorder*' commonly known as 'PTSD'.

6.1. She would attribute the delay on part of victim's mother to the fear of being subjected to violence had the Applicant sniffed a complaint being filed against him and thus gained the support of her

parents after relocation of the victim in order to ensure her safety before filing of the Complaint.

6.2. She would submit that Applicant's narration as far as no prudent father would make such false allegations against his own daughter save one who can commit the act of assaulting his own daughter. Hence in the light of the foregoing submissions she would vehemently oppose the Bail Application preferred by the Applicant.

7. I have heard Mr. Rao, Ms. Ganpathy and Ms. Chandak and with their able assistance perused the record of the case placed before me.

8. After having heard the submissions of parties, it is amply clear that the parties are at variance on many aspects and the only undisputed fact in the case before me is that the victim used to reside with the Applicant during the alleged date of incident and she continued to do so until about August 2023. In such a case where contentions are open for adjudication, while deciding a Bail Application, I am constrained to rely on the *prima facie* material available before me or lack thereof to come to a *prima facie* opinion, which in this case is the FIR, statement of the mother and medical reports. The medical reports clearly state that Applicant denied to undergo medical assessment, the reasons for the same would be best known to her, had she undergone the assessment, the prosecution

would have had some opportunity to gather vital evidence or at least could have proved her *bona fides* before Court especially where the case of the prosecution is dampened with a set of delays.

9. The reason that impels me to consider the abnormal delay in filing the complaint are the intervening circumstances in the present case. In the present case, *prima facie* delay is evident on three counts:

9.1. **First delay - Date of incident i.e. May 2023 upto December 2023:** Record shows that mother of First Informant returned back from hospital immediately on the second day after the incident. FIR does not disclose the date of incident and merely states "sometime in May 2023". First Informant resided with her parents and went ahead with her regular activities during the above period without any complaint. The First Informant's mother did not find anything amiss about her during the period falling immediately after the date of incident until August 2023 when the victim shifted to her maternal grandparent's place.

9.2. **Second delay -** The second count of delay is from **August 2023 to December 2023**. During this period once again there was no complaint or signs of anxiety exhibited by the First Informant either to her maternal grandparents or even to her mother who visited her occasionally.

9.3. Third Delay - The third count of delay is from **December 2023 to February 2024** when finally the mother of the victim noticed something amiss in her daughter. It is pertinent to note that on the first count of delay, the First Informant's mother resided with her along with the Applicant. On the second count of delay the First Informant resided with her maternal grandparents at their residence and her mother used to visit her. In the third count of delay the mother of the victim also shifted to reside with the victim at her maternal home in December 2023. It is surprising that the mother did not see anything amiss with her own daughter i.e. the victim during the intervening period between December 2023 – February 2024 for about three months even though she was residing with her, now in a different and in all probability a non-hostile environment which could be an arguable reason attributed to the delay in the first count of delay but not in the third count of delay.

9.4. Fourth delay - The fourth leg of delay is extremely crucial it is between **February 2024 to April 2024**. The Mother of First informant was informed about the incident in February 2024 by her but she did not take any concrete steps. This is *prima facie* shocking. Her statement appended at page No. 96 states that she discussed the incident with her parents in April i.e. two months after gaining knowledge of the incident and thereafter accompanied the victim to

file the FIR on 12.04.2024. But the most intriguing part is that it is only after June 2024 i.e. after about two months that first informant approached the Municipal hospital for treatment of anxiety and depression. Record shows that she refused medical examination at that time. The aforesaid timeline is inexplicable and raises serious doubt. Although delay in filing FIR would not be fatal to the case of prosecution, the circumstances for delay have to be cogent, however in the present case *prima facie* they do not appear to be so if the above timeline is seen.

10. The most crucial aspect that applies to the issue of delay is that the First informant did not take any medication for any of the problems and issues which are exhibited upto June 2024 and it is only after filing of the FIR in April 2024 in the month of June 2024 for the first time she exhibited her medical problems and started taking treatment.

11. From the record, it is seen that the Applicant has now referred to and relied upon her medical condition exhaustively to contend that she has suffered immense trauma because of the incident in question. What is intriguing is that until June 2024 i.e. more than a year post incident, the First Informant was virtually unaffected due to the incident. There is a stoic silence on the part of First Informant as also her mother qua her medical condition. The First Informant had

appeared for her SSC examination prior to the incident and could not have been said to be so naive so as to not understand the consequences of the incident. She could have easily confided about the incident to her mother but she did so only in February 2024 i.e. nine months after the incident. This itself is surprising. Even after she moved to her grandparent's place three months post the incident in question around August 2024, for the next six months she did not confide about the incident to any person, until finally confiding in her mother in February 2024 despite the mother thereafter residing with her from December 2023 onwards. A further two months after she informed her mother about the incident, the First Informant was completely unaffected with any medical problems or ailment. The aforesaid set of circumstances clearly do not have an answer when the First Informant is now heavily relying upon her traumatic experiences and medical condition allegedly on the basis of the incident which is alleged to have happened in May 2023 in question. Such lacunae and questions remaining unanswered clearly tilt the balance in favor of the Applicant at this *prima facie* stage. On the basis of material discussed hereinabove it needs to be re-iterated that FIR does not state the date of incident. The statement of her mother states that she was informed by First Informant only in February 2024 and she discussed about the same with her parents (victim's grandparents) in April 2024 and filed

the Complaint on 12.04.2024. This delay is also unexplained which no prudent mother supporting the First Informant / victim in a given case would commit.

12. In view of the above observations, present Application is allowed in terms of prayer clause (i) 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 report to the Investigating Officer of the concerned Police Station once every month on the third Sunday between 10:00 a.m. to 12:00 noon for the first three months and thereafter as and when called upon;

(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 not attend, 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 make any attempts to contact the victim / First Informant or any of the witnesses either physically or by

means of any electronic device 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;

13. Any infraction of the above conditions shall entail prosecution to seek cancellation of this order.

14. It is clarified that the observations in this order are limited for the purpose of granting Bail only and it should not be construed as observations on merits of the case.

15. Fees be paid by the High Court Legal Aid Services Authority of this Court to the learned appointed Advocates for Respondent No.2 as per rules.

16. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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by HARSHADA
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