

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4171 OF 2024

Deepak Babulal Thakur ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Dr. Abhinav Chandrachud a/w. Mr. Abhishek Mishra for Applicant.
Mr. Avinash A. Naik, APP for Respondent No.1-State.
Ms. Ruchita Jain for Respondent No.2.

CORAM : MANISH PITALE, J.
DATE : JANUARY 30, 2025

P.C. :

. Heard Dr. Chandrachud, learned counsel appearing for the applicant, Mr. Naik, learned APP appearing for respondent No.1-State and Ms. Jain, learned counsel appearing for respondent No.2.

2. The applicant is seeking bail as he was arrested on 11.05.2024 in connection with FIR No.0136 of 2024 dated 24.04.2024 registered with NRI Sagari Police Station, Navi Mumbai, for offence under Section 363 of the Indian Penal Code, 1860 (IPC). By the time the charge-sheet was filed, the accused persons are charged with having committed offences under Sections 376(2)(n), 376(3), 370, 465, 468 and 471 of the IPC; Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act); as also under Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (PITA Act).

3. It is to be noted that the respondent No.2 is already represented by an advocate before this Court. It is necessary to hear respondent No.2, in the present case, as offences under the POCSO Act are also registered against the applicant.

4. In the present case, after registration of the FIR, the manner in which the case unfolded, indicates that the first informant i.e. the applicant is arraigned as an accused, while the original FIR was registered against unknown persons. The applicant is a maternal uncle of the victim girl and he is also arraigned as an accused along with other accused persons, who allegedly exploited the victim girl, who was working in an orchestra bar for past couple of years. It is to be noted that the FIR, in the first place, was registered at the behest of the applicant himself as he had reported that the victim girl had gone missing. The investigating authority came to the conclusion that the applicant, although he was the first informant, had to be arraigned as an accused in the peculiar facts and circumstances of the present case.

5. The learned counsel for the applicant submits that by an order dated 14.08.2024 in Anticipatory Bail Application No.1870 of 2024, this Court granted relief of anticipatory bail to the wife of the applicant, who was also a co-accused. It is submitted that this Court took into consideration the statement of the respondent No.2 (victim girl) recorded under Section 164 of the Code of Criminal Procedure, 1872 (Cr.P.C.) before the competent Magistrate. In the said statement, the respondent No.2 has absolved the applicant herein also and therefore, this Court may consider invoking the principle of parity and granting relief to the applicant.

6. The learned APP submits that the allegations levelled against the co-accused, who was granted relief and the applicant herein are similar. The learned counsel appearing for respondent No.2, on instructions, makes a statement that the respondent No.2 has no objection to the applicant in this application also being granted relief as she stands by her statement recorded under Section 164 of the Cr.P.C.

7. In the order dated 14.08.2024 passed in favour of the co-accused

(wife of the applicant herein), this Court made the following observations:-

“11. It is unfortunate that such a minor girl was allegedly exploited physically and sexually at an orchestra bar at a tender age. There is substance in the contention raised by the learned APP that it is simply unbelievable that the applicant and her husband, with whom the victim girl was residing, were ignorant about the said activities at the orchestra bar. Equally, there is substance in the contention of the learned APP that such a minor girl perhaps could not have forged her Aadhar Card and other documents on her own, without the involvement of others. The photographs on record with the charge-sheet indicate the victim girl to be precocious in her growth and her photographs are indeed seen with unknown persons, who are arraigned as accused and investigating authorities are making efforts to apprehend them. But the statement of the victim girl recorded under Section 164 of the Cr.P.C. before the competent magistrate dated 21.05.2024, cannot be brushed aside. In the said sworn statement, the victim girl has completely absolved the applicant and her husband. The aforesaid statement, at this stage itself, indicates that the victim girl may not support the prosecution case at all. It is also a matter of record that before the Sessions Court also, the victim girl had given no objection for anticipatory bail being granted to the applicant. The same stand is taken before this Court.

12. It is sought to be indicated that the victim girl was a child born outside marriage to her biological mother and in that backdrop, she was sent to the applicant i.e. her maternal aunt. It is sought to be indicated that when the victim girl came to know about the alleged fact, she developed enmity against the applicant and her husband, thereby implicating them in the present case. Such assertions would of course be a matter of trial, but as on today, the stand of the victim girl taken on oath makes a world of difference to the manner in which the present application needs to be considered.

13. Apart from this, the statements recorded during the course of investigation, *prima facie*, do not indicate the role of the applicant in forging documents pertaining to the victim girl and / or forcing her into working with the orchestra bar. Further investigation may lead to material that may come on record, but as on today, in the light of the aforesaid material, the applicant has indeed made out a case for granting relief.”

8. It is brought to the notice of this Court that the applicant was arrested on 11.05.2024. Hence, the applicant is seeking the enlargement on bail. Although the considerations for anticipatory bail and regular bail can be different, this Court is of the opinion that when this Court found substance in the contentions raised on behalf of the co-accused person, against whom identical allegations were made for being granted anticipatory bail, the prayer for regular bail made on behalf of the applicant herein also deserves to be granted. The principle of parity in that sense can be invoked in favour of the applicant in the present application, and therefore, the instant application deserves to be allowed.

9. In view thereof, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with FIR No.0136 of 2024 dated 24.04.2024 registered with NRI Sagari Police Station, Navi Mumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (C) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

10. Needless to say, violation of any of the aforesaid conditions would

make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. The bail application stands disposed of.

(MANISH PITALE, J.)

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