

Ajay

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

CRIMINAL BAIL APPLICATION NO. 5194 OF 2024

1. Deepak Kumar s/o. Narendra Kumar; and	
2. Sumit Rajesh Jangu	.. Applicants
Versus	
The State of Maharashtra and	.. Respondents

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- Mr. Sudeep Pasbola, Senior Advocate a/w. Mr. Siddharth Jagushte, Mr. Ayush Pasbola, Advocates i/by Mr. Akash Kavade for Applicants.
 - Mr. Dinesh J. Haldankar, APP for Respondent No.1 – State.
 - Mr. Vijaykumar A. Kamble, Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2025.

P.C.:

1. Heard Mr. Pasbola, learned Senior Advocate for Applicants; Mr. Haldankar, learned APP for Respondent No.1 – State and Mr. Kamble, learned Advocate for Respondent No.2.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.259 of 2024 registered with Powai Police Station for the offences punishable under Sections 376-DA and 506(2) read with 34 of the Indian Penal Code, 1860 (for short ‘**IPC**’) and Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘**POCSO**’).

3. Applicants before me are arraigned as Accused Nos.1 and 2 in C.R. No.259 of 2024. Respondent No.2 is the victim girl who is 15 years old. She has lodged a report of being subjected to molestation by gang rape by the Applicants on the basis of one singular incident on 17.10.2023. She has alleged that on that date at about 09:30 p.m. she was called by Accused No.1 to his house where he dragged her inside and locked the door. Inside his house, Accused No.2 was also present according to her. On the same date at about 04:00 p.m. Accused No.2 had volunteered to give her a lift on his scooty to her tuition classes which she refused. The alleged incident according to the statement made in the FIR is that Accused Nos.1 and 2 after dragging her inside the flat of Accused No.1 attempted to molest her and ravished her modesty and while they were doing so Accused No.1 received a phone call from his wife and as she and the victim's mother were both returning back home, Accused let her go.

4. The date of the incident is dated 17.10.2023 whereas the date of the FIR is dated 13.03.2024 i.e. almost 5 months after the date of incident.

5. Perusal of the FIR shows that between 09:30 p.m. to 09:40 p.m. for 10 minutes on the date of incident the allegation against Accused is of molesting and ravishing the modesty of the Complainant. Since FIR is lodged after 5 months, the reason for delay stated in the

FIR is that Complainant was in depression for sometime and in December, 2023 she revealed about the incident to her mother and it is only on 08.03.2024 Complainant addressed a detailed email to the Senior Officers of the Indian Coast Guard upon which on 13.03.2024 the FIR was lodged.

6. It is seen that Complainant alongwith her parents resided in Flat No.201 of Building No.16 of Indian Coast Guard Customs Colony, Powai, Mumbai 400 072. Accused No.1 is the occupant / resident of Flat No.B-203. Accused No.2 is the occupant of the same building, but residing at Colaba Dockyard Quarters. Record clearly shows that father of Complainant, Accused No.1 and Accused No.2 are all Central Government servants employed with the Indian Naval Coast Guard i.e. Indian Navy.

7. From the record which is placed before me it is clearly seen that in January 2024 the Complainant's father had filed a complaint with the Indian Coast Guard Office against the Applicants who are his colleagues at work. This complaint pertains to internal departmental issues and proceedings. Pursuant to filing the said complaint, departmental proceedings were initiated after recording the statements of all concerned persons including the father of the Complainant. Authorities thereafter called upon the father of Complainant to produce independent witnesses in respect of his complaint which he

had filed against the Applicants. Father of the Complainant was unable to provide independent witnesses in support of his complaint and he was emotionally disturbed, as a result of which atmosphere and environment in his family was also disturbed.

8. Since the father of Complainant was unable to prove and justify his complaint, the Indian Coast Guard Services – Head Office filed a closure report and closed the complaint. Closure of this complaint once again led to a fall of gloom in the house of the Complainant. Complainant therefore could not bear the said situation and having a grudge on the Applicants decided to take revenge against the Applicants. This specific information ought to have been investigated by prosecution, but it is infact stated on Affidavit by Complainant's own mother who is presently providing care to the Complainant. Detailed Affidavit to this effect has been filed on 22.09.2024 annexing the closure report of the complaint which was filed by Complainant's father. Her Advocate has also addressed the Court. Complainant's mother has stated that on 11.03.2024 the father of Complainant was assigned duty to sail on a Coast Guard Ship and he went sailing. It is stated in the Affidavit filed by the mother that Complainant without consulting anyone for advice visited the Powai Police Station on 13.03.2024 to lodge a complaint against the Applicants.

9. After filing of the complaint, the Complainant was under impression that she has taught Applicants a lesson by putting them behind bars. However the situation infact turned out to be detrimental to the Complainant's own case as due to her thoughtless actions, she felt guilty and depressed and went into depression thereafter. It is stated by her mother that the said situation and aftermath of the said situation has taken a heavy toll on the Complainant's mental health which has rapidly declined thereafter due to societal behaviour and therefore father of Complainant has sought for a transfer out of Mumbai in order to have a change for the Complainant. In so far as the *inter se* departmental complaint between Complainant's father and Applicants is concerned, the said fact is true.

10. Coming back to the FIR Complainant's version is that when the Applicants were molesting her Applicant No.1 received a phone call from his wife. It is infact seen that no such phone call was ever received. Prosecution has not been able to show the same.

11. Delay in filing the complaint is clearly evident. That apart, one of the intriguing fact is that according to the Complainant's own case she confined about the incident to her family members in December, 2023 as recorded by herself while giving her medical history during medical examination on 14.03.2024 which is appended at page No.66 of the Application. If this is the case, there was no

reason for the Complainant or her family to wait until 13.03.2024 to file the complaint. From the Affidavit filed by the Complainant's mother it is borne out that the complaint was infact filed by her daughter on her own volition without informing her parents. Hence there is clear material contradiction in the statement of the Complainant herself.

12. In so far as the Applicants before me are concerned, they are Sailors by profession and employed by the Indian Coast Guard Services. They have no antecedents whatsoever. That apart, it is clearly seen that the CDR placed on record from page Nos.103 to 107 of the Application shows that no such phone call was ever received by Applicant No.1 which is alleged to have been received as stated by the Complainant in her statement.

13. In view of the above material contradiction, Applicants' further incarceration is unwarranted. Both the Applicants are entitled to bail.

14. In view of the above, Bail Application stands allowed on the following terms and conditions:-

- (i) Applicants i.e. Deepak Kumar s/o. Narendra Kumar and Sumit Rajesh Jangu are directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) each with one surety in the like

amount;

- (ii) Applicants shall report to the Investigating Officer at Powai Police Station as and when called by the Investigating Officer;
- (iii) Applicants 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 they do so it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;
- (v) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;
- (vi) Applicants shall not make any attempt to re-associate with the victim girl in any manner either through any device or in-person; and
- (vii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicants.

15. Needless to say, violation of any of the aforesaid conditions would make the Applicants 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 Applicants in the present Application and that the Trial Court shall proceed further without being influenced by the observations made in this order.

16. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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