

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 5264 OF 2024

Owaish Yunus Mansuri

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

.....

- Mr. Jitesh Agarwal for Applicant
- Mr. H.J. Dedhia, APP for Respondent No. 1 - State
- Mr. Neeraj Agarwal a/w Ms. Sunaina Chakrovarthy for Respondent No. 2.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 17, 2025

P. C.:

1. Heard Mr. Jitesh Agarwal, learned Advocate for Applicant; Mr. Dedhia, learned APP for State and Mr. Agarwal, learned Advocate for Respondent No.2.

2. Applicant - accused has filed the present Application for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**") in connection with Crime No. 573/2024 registered with Andheri Police Station, Mumbai for offences punishable under Sections 64(1) and 115(2) of the Bharatiya Nyaya Sanhita, 2023 (for short, "**BNS**").

3. The facts in the present case *prima facie* show that the first informant was 20 years old at the time of incident. She came to

stay in Mumbai for the purpose of her education in the year 2022 in college and sometime in May 2023 befriended the Applicant who was also a student of St. Xavier's College. She has stated that they used to regularly meet each other and go out together which is seen from the record as also her recorded statement despite the fact that she has in her FIR referred to the incident which had occurred in the month of November 2024. There is another dichotomy which is noticed by the Court. That prosecutrix has stated in the FIR that she came to know the Applicant only in June 2024 through common friends but the same is *prima facie* contrary to her own statement which is appended to the chargesheet which states that she knew the Applicant since May 2023. Applicant and the prosecutrix along with their common friends met at Phonix Palladium Mall at Lower Parel on 24.11.2024. It is prosecution case that they all had drinks to such an extent that they lost control whatsoever. Thereafter all their common friends left, but prosecutrix and Applicant returned back to the same bar in the said Mall and consumed more alcohol after which they both left. Prosecution case is that thereafter victim regained her conscious on the following day when she found herself in a hotel room along with the Applicant. Crime was thereafter registered by the victim. It is the case of prosecution that victim initially resisted the Applicant from committing any act or keeping any physical relations with her however the

Applicant did not relent. In her statement however she has also stated that before the incident both i.e. she and the Applicant were heavily drunk and after their common friends left the party premises, they both again went back together and started drinking again and then left together.

4. Mr. Neeraj Agarwal, learned Advocate for Respondent No. 2 has persuaded the Court to consider the affidavit dated 05.02.2025 filed by the victim in which she has persuaded the Court to consider the case for dropping of the charges against the Applicant. Prosecutrix, Applicant and the prosecution can take appropriate steps as available to them in accordance with law, however insofar as the Application is concerned, *prima facie*, I find clear dichotomy in the recorded statements of the prosecutrix which are referred to herein above which persuade me to consider the Applicant's case for grant of bail. The element of *prima facie* consensualness is seen by the Court. Hence, Bail Application is allowed 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. 25000/- with one or two sureties in the like amount;

- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

5. 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. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

6. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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