



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 956 OF 2024

Pritam Chandulal Oswal ... Applicant
versus
The State of Maharashtra ... Respondent

Mr.Kuldeep Nikam a/w Mr. Om. N. Latpate for Applicant.
Ms. Mahalaxmi Ganapathy, APP for Respondent/State.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 26th JUNE 2024

PRONOUNCED ON : 3rd JULY 2024

PC.

1. The applicant, who is arraigned in C.R. No.1298 of2023 registered with Hadapsar Police Station, Pune for the offences punishable under Sections 307, 376, 376(3)(n), 376(h), 376(d), 377, 384, 385, 366, 354, 354(A), 313, 502(2), 506, 504 and 323 read with 34 of the Indian Penal Code, 1860, Section 4 read with 25 of the Indian Arms Act, 1959 and Section 135 read with 37 (1) of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.

2. The indictment against the applicant can be stated as under:

(a) The first informant, a 28 years old lady, became acquainted with the applicant, who is married, on face-book. The applicant assured to help the first

informant in resolving the proceedings which were initiated on account of the alleged exploitation of the first informant by other person. Initially, the applicant professed to treat the first informant like her brother.

(b) The first informant alleged that, on 10th July 2020, on the pretext of meeting with an Advocate, the applicant took the first informant in a car to secluded place and had forcible sexual intercourse with first informant at gun point. The applicant had allegedly video recorded the said act and by threatening to make the said video recording viral continued to exploit the first informant sexually. Later on, the applicant started to harass and exploit the first informant by threatening to kill the first informant and her relatives by employing gangsters. Various incidents of sexual exploitation at the hands of the applicant have been narrated by the first informant.

(c) The substance of the accusation is that when the first informant conceived, the applicant forced the first informant to abort the fetus. For the said purpose, the applicant had assaulted the first informant mercilessly. The applicant had attempted to strangulate the first informant. The applicant had assaulted the first informant by means of kick blows on her stomach, while she was carrying pregnancy. Eventually, on 18th September 2022, the first informant suffered the miscarriage. The applicant had also financially

exploited the first informant.

(d) When the first informant went to the house of the applicant, the family members of the applicant/co-accused, had also abused and assaulted her. It was, *inter alia*, alleged that on 28th May 2023, when the first informant had been to the house of the applicant and demanded return of the gold and money, the applicant and his father took turns to sexually exploit her. Eventually, the first informant lodged the report on 30th August 2023.

3. Mr. Kuldeep Nikam, the learned Advocate for the applicant submitted that the relationship between the parties commenced in the year 2019 and lasted till June 2023. The last act of sexual exploitation allegedly occurred on 24th June 2023. The FIR came to be lodged on 30th August 2023. There is an inordinate and unexplained delay in lodging the report. Taking the Court through the allegations in the FIR, especially the alleged acts of sexual exploitation at various places, over the years, Mr.Nikam submitted that the relationship can only be said to be consensual. The first informant was treated like as a family member of the applicant and participated in the festivals and festivities at the house of the applicant. It was further urged that when the relationship turned sour, wild allegations were levelled against the applicant and his family members. Rest of the co-accused have been granted pre-arrest bail.

4. Mr.Nikam made an endeavour to urge that witnesses, who have supported the first informant's version, are all interested witnesses, being relatives and close associates of the first informant. At any rate, the alleged acts of assault and physical abuse were in a state of frustration as the first informant insisted to abort the fetus against the wishes of the applicant. Mr. Nikam submitted that as the investigation is complete for all intent and purpose and the applicant has been in custody since August 2023, further detention of the applicant is wholly unwarranted.

5. In opposition to this, Ms. Ganapathy, the learned APP, stoutly resisted the prayer for bail. At the outset, it was submitted that the applicant does not deserve any discretionary relief as the applicant had made an attempt to escape from the custody of police and a separate prosecution for the same has been lodged.

6. Secondly, Ms.Ganapathy submitted that, the allegations in the FIR are required to be considered in the light of the fact that the applicant had been much married. There are statements of witnesses, who have categorically stated that the applicant not only physically abused the first informant but also attempted to strangulate her. The applicant had allegedly assaulted the first informant while she was carrying pregnancy. In these circumstances, according

to Ms.Ganapathy, the learned APP, the applicant cannot be permitted to wriggle out of the situation by submitting that the relationship was consensual.

7. Lastly, Ms. Ganapathy submitted that the release of the applicant is fraught with the risk of the applicant fleeing away from justice as he had already made an attempt to escape while in custody and to the safety of the first informant and her family members as the applicant had threatened to eliminate them by employing gangsters. Therefore, the applicant does not deserve to be enlarged on bail, submitted Mr. Ganapathy.

8. I have given careful consideration to the material on record and the submissions canvassed across the bar. To begin with, the situation in the life of the parties is required to be kept in view. The applicant was 32 years of age and married. It was submitted on behalf of the applicant that the first informant was also married. Without delving into this aspect, it emerges that the first informant was about 25 years of age when proximity developed between applicant and the first informant. Evidently, the first informant had maturity to understand the nature, quality and consequence of the acts for which her consent was allegedly forcibly obtained.

9. At the first blush, the submission of Mr. Nikam that the applicant and the first informant were in a relationship for more than three years and the

sexual relations were consensual, may appear alluring. It could be urged that first informant had ample opportunity to resist and report the alleged sexual and physical acts of the applicant. However, in the peculiar facts of the case, the material on record is required to be examined in the light of the attendant circumstances.

10. Prima facie, there does not appear much controversy on the point that the first informant conceived and there was a miscarriage. Mr. Nikam made an endeavour to urge that the applicant was insisting for continuation of the pregnancy and it was the first informant who wished to get a rid of the child. Attention of the Court was invited to the conversations between applicant and the first informant on Whats-app.

11. In contrast, there are statements of witnesses before whom the applicant had allegedly abused and assaulted the first informant and even attempted to strangulate her. A lady, who is the tenant of the premises of the first informant, has stated about the pressure exerted by the applicant on the first informant to abort the fetus. The applicant had kicked first informant in the stomach while she was pregnant. The applicant had not only threatened the first informant with dire consequences but also relatives of the first informant as well as the said witnesses. When the first informant suffered the miscarriage, the applicant asked the first informant to throw the fetus in the drain.

12. The sister of the first informant also stated about the manner in which the applicant had physically, financially and sexually exploited the first informant. The statement of two more witnesses assume significance. A lady who worked in the beauty parlour narrated about the manner in which the applicant had assaulted the first informant and attempted to strangle her in the presence of number of persons including Hanuman Shinde, the employee of the first informant. Another lady who runs the said beauty parlour also stated about the said occurrence.

13. What is of critical salience, at this stage, is the statement of Mr. Hanuman Shinde, the employee of the applicant, who fully supports the version of aforesaid witnesses with regard to the said occurrence. Hanuman Shinde states that the applicant assaulted the first informant till she lost consciousness and had a vomit, due to strangulation.

14. The aforesaid statements of the witnesses are required to be read in conjunction with transcript of the Whats-app conversation between applicant the first informant which prima facie substantiate, by and large, the allegations of the first informant with regard to sexual exploitation and giving threats, including a threat that the applicant would not spare the first informant even if he is sentenced for her murder.

15. At this stage fact that the applicant has given threat to the first

informant while in custody and even made an attempt to escape from the custody cannot be lost sight of. Cumulatively it appears that the applicant had sexually, physically and financially exploited the first informant. Consensual relationship, even if the submission on behalf of the applicant is taken at par, does not give a license to exploit the partner, much less in the manner in which the material on record, in the instant case, indicates.

16. Lastly, it must be noted that while granting relief to the co-accused this court had adverted to the aspect of the improbability of the allegations qua the father of the applicant. However, that cannot be a ground to grant bail to the applicant against whom there is overwhelming material. I am, therefore, not inclined to exercise discretion in favour of the applicant.

ORDER

- (i) Bail Application stands rejected.
- (ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)