

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.107 of 2022

Yuvraj Laxman Shingate .. Applicant
 Versus
 The State of Maharashtra .. Respondent

...

Mr.Ashok Mundargi, Sr.Advocate with Kunal Ambulkar for the applicant.
 Ms.Meghna Gwalani for respondent no.2.
 Mr.S.H.Yadav, APP for the State.
 PSI Shri Tanaji Patil from Vanrai police station.

CORAM: BHARATI DANGRE, J.
DATED : 13th SEPTEMBER, 2022

P.C:-

1 The applicant has been arraigned as an accused in Special Case No.494/2021 pending before the Court of Special Judge under the POCSO Act, 2012 Borivali Division, Dindoshi, Mumbai arising out of C.R.No.549/2021 registered with Vanrai police station, Mumbai for offences u/s.376(a), 354(d), 34 of IPC r/w Section 4, 8 and 12(5) of POCSO Act r/w 67(B) of the Information Technology Act.

2 The offence was registered at the instance of victim girl herself and the applicant came to be arrested on 17/10/2021 and since then, he is detained.

The applicant seek his release on bail on the ground that the investigation is complete and the case of the prosecution from the charge-sheet, appear to be doubtful.

I have heard learned Sr. Advocate Mr.Ashok Mundargi for the applicant, Advocate Megha Goyalani for respondent no.2 and Mr.S.H. Yadav, learned APP for the State.

3 In order to appreciate the contention advanced on behalf of the applicant, it is necessary to briefly refer to the case of the prosecution.

The prosecutrix/First Informant, who is aged 18, when she reported to the police on 15/10/2021, levelling accusations against the applicant, has her date of birth as 27/6/2003.

She narrated that in July 2019, she came to know through an Instagram post that in Gorai, a beach photo-shoot was scheduled and one can earn money out of it and the photo-shoot was being conducted by one Yuvraj/Prince. On establishing contact with him, she along with her friend Daksh met the applicant on 17/7/2021 and a photo-shoot session was conducted on the beach, but since some semi-nude photos were to be shot, she was taken to the cottage by the applicant, and her friend was asked to stay outside. She was offered alcohol which she politely declined, but it is alleged that the applicant touched her inappropriately and when she stated to the applicant that she do

not want to continue with the photo-shoot, he insisted that she should complete it as the room was hired. The photo-shoot was completed and she received Rs.9,000/- and as per her version, photographs were emailed to her.

4 As per the version of the prosecutrix, she was in need of money and therefore, she established contact with the applicant once again in August 2019 and met him in Gorai. On reaching the spot, she was taken to another cottage and she was shown nude photographs of some models as well as her photographs and she was told that the photographs are safe with him. It is then alleged that he clicked nude photographs and he raped her while the camera was on. She narrated that the applicant paid her Rs.15,000/- and also threatened her that if she disclosed this to anyone, the photographs would be made viral.

As per the prosecutrix, the applicant continued to have forcible sexual encounters with her for next four months and when the applicant asked her to sent more girls for photo-shoot, on a commission being offered, she blocked him on social media. It is also her narration that her Instagram friend whose nude photographs were clicked by the applicant, committed suicide and he went into depression and disclosed the incident to her mother.

The prosecutrix further narrate that, somewhere on 14/10/2021, she received a message from Huda Virani from one

“pvtviranii” and the message was that if she wants her photographs to be deleted, one person name ‘Agnes’ would help her and a number was supplied to her. She attempted to contact but the number was not traceable, when she started receiving messages from Instagram account, she approached Vanrai police station and got the offence registered.

5 During investigation, the police recorded the statements of the witnesses, medical examinations were conducted, spot panchnama was executed, photos and videos were retrieved in the presence of panchas. It is stated that CDR and other reports from cyber cell in regards to instagram account “pvtviranii” is still awaited. Thereafter, investigation was concluded and charge-sheet came to be filed in the Special Judge, 12th Court, Dindoshi, Mumbai on 6/12/2021.

6 The Investigating Officer also recorded statement of her friend Daksh, who in his statement dated 24/10/2021 has stated that the applicant, had before hand told them that he would take semi nude pictures and thus the applicant and the victim went to the cottage and Daksh was told to wait outside.

As per Daksh’s statement, it was not forceful or a surprise that the First Informant was told to pose for semi nude pictures as portrayed by the First Informant. In fact, Daksh has stated that their common friend, had in the inception itself, informed the victim girl that the photo-shoot would be “semi

bold". As such, even as per the prosecution case, the First Informant was well aware of what kind of photo-shoot was to take place and by showing up for the photo-shoot, she had agreed for the same.

7 As per the prosecutrix, she was touched inappropriately in her first meeting with the applicant but it is surprising that she visited him again in August 2019 for another photo-shoot, and not only this, she has received the money for the photo-shoot.

It is on this occasion, it is alleged by her that she was raped in another cottage and her allegation in general, is that the sexual harassment continued for next four months, but she did not report of the incident to anyone and for the first time, on 15/10/2021, after a span of about two years, after the incident occurred in August 2019, she reported to the police.

As per the version of the prosecutrix, she told her mother about the incident during Covid lockdown, but surprisingly, she reached the police station only on 15/10/2021, reflecting that there is a delay of more than two years for which no explanation is offered. Furthermore, the Investigating Agency during investigation has conducted a spot panchnama where the applicant and First Informant allegedly went on 17/07/2019 i.e. the first time they had met along with the First Informant's friend Daksh. They visited one 'Fonseca Beach Resort' and took a copy

of the Register maintained by the resort management and the said register shows entry of customers in the name of one “Yuvraj Desai” and “XYZ” who is no one else, but the applicant and the prosecutrix respectively.

The said register thus establish the version of the prosecutrix that she visited the applicant for photo-shoot but it is not this place where she allege that forcible sexual intercourse is committed with her.

As far as the medical evidence is concerned, it is of no help to the prosecution as the medical examination is conducted after two years of the alleged incident and it is recorded that there is no injury on the private part, but though it report of old hymen tear.

As regards the accusation about being harassed through an Instragram account, being “pvtviranii” and one “Huda Virani” who had stated to the First Informant that if she wants her photos deleted then she should contact one person “Agnes”, there is no corroboration by the prosecution.

8 In the wake of the material compiled in the charge-sheet with the photographs of the prosecutrix being placed on record, which reflect the photo-shoot which she underwent, it can only be said that the prosecutrix herself was ready for the photo-shoot and the investigation has further revealed that the mobile phone of the applicant was seized, which contained various

applications and all the 63,772 photos came to be recovered from the photo gallery but there were no nude photographs of the prosecutrix.

9 In the wake of the above material collected by the prosecution against the present applicant, on completion of investigation, though he may take the consequences of the accusations levelled against him at the time of trial, his further incarceration is not necessary.

The prosecution will ultimately have to prove its case of forcible sexual intercourse committed by the applicant on the prosecutrix and establish the truthfulness of her version. Since there are no antecedents attributed to the applicant nor he is at flight risk, the application deserve to be allowed.

Observations made above are prima facie in nature and limited for the purpose of adjudication of the present applicant, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged.

ORDER

- (a) The Applicant – Yuvraj Laxman Shingate in connection with C.R.No.549/2021 registered with Vanrai Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.

- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (c) The Applicant shall attend the trial on regular basis.
- (d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)