

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1857 OF 2023

Roshan Bengali Ray ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Jay Bharadwaj a/w. Mr. Harsh Ramchandani, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.
Ms. Apurva Gupte, for Respondent No. 2.
Mr. Nitin Sawant, ASI Bangur Nagar police station.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 29, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 63 of 2023 registered with Bangur Nagar police station for the offences punishable under section 354 of Indian Penal Code, 1860 and sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, has preferred this application to enlarge him on bail.
3. The indictment against the applicant is that on 6th February, 2023 at about 00.30 hours while the victim - a five year old daughter of the first informant, was sitting beside the applicant in the BEST bus, the applicant had committed sexual assault by pulling the hand of the victim and making her to keep it on his private part. The applicant had allegedly pulled down his trouser and the undergarment of the victim and inappropriately touched

the private part of the victim. The first informant noticed the acts and raised alarm. The other relatives of the first informant, co-passengers, conductor and driver of the bus came near the seat on which the applicant and the victim were sitting. The applicant was allegedly caught red handed with his pant down. The bus driver took the bus to Bangur Nagar police station and the applicant was apprehended.

4. The learned counsel for the applicant submitted that the applicant has been falsely roped in on the basis of suspicion. Though, a number of witnesses including the co-passengers, conductor and driver of the bus have stated about the alleged occurrence yet, the similarity of their versions indicates that their statements have been recorded in a mechanical manner. It was further submitted that none of the offences with which the applicant has been charged entails punishment exceeding five years. Therefore, the applicant deserves to be released on bail.

5. The learned APP resisted the prayer for bail. It was submitted that the applicant was caught in the act of sexual assault of a five year old child not only by the relatives of the victim but the co-passengers, conductor and driver of the bus.

6. Ms. Gupte, learned counsel who was appointed to espouse the cause of respondent No. 2 also resisted the prayer for bail. Attention

of the Court was invited to the statements of the co-passengers who had allegedly seen the applicant in the act.

7. The victim has narrated the act of sexual assault, she was allegedly subjected to by the applicant. *Prima facie*, the version of the victim and the first informant finds support in the statements of co-passengers, conductor and driver of the bus. The witnesses have consistently stated that in front of Goregaon bus depot a lady raised alarm. That attracted their attention towards the applicant and the victim. They claimed to have found the applicant with his trouser down.

8. I find substance that the submission of learned APP and the learned counsel for the victim that, at this stage, there is no reason to discard the statements of the witnesses as mechanical. *Prima facie*, there is overwhelming material to show the complicity of the applicant. Having regard to the age of the victim, this does not seem to be a fit case to exercise the discretion in favour of the applicant especially in view of the time and place of the occurrence. An unsuspecting small child was allegedly sexually exploited in a public transport. Therefore, the application deserves to be rejected.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] 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.)