

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 105 OF 2017

STATE, THR. ITS POLICE
INSPECTOR/INVESTIGATION OFFICER,
MAINA CURTORIM POLICE STATION.,

... Applicant

Versus

SHRI. AJAY KANKAPUR.,

... Respondent

Mr. S. R. Rivankar, Public Prosecutor for the applicant.
Mr. Amit Palekar, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 20th June, 2017

P.C.

This is an application for cancellation of bail.

2. The prosecution case is that, on 21.02.2017 at about 19:15hrs the respondent had taken the prosecutrix, who is aged 15 years, towards Navelim side on a beach. The respondent/accused gave a soft drink to the prosecutrix on account of which she felt dizzy. Further, according to the prosecution, the respondent had forcible sexual intercourse with the prosecutrix on the beach and then dropped her home at about 21:30hrs.

3. On the basis of a complaint lodged by the prosecutrix with

Maina Curtorim Police station, an offence punishable under Section 354, 354-A, 363 and 376 of I.P.C., read with Section 8 (2) of the Goa Children's Act, 2003 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 has been registered against the respondent and the investigation is stated to be in progress.

4. The learned Children's Court by Order dated 23.02.2017 has granted bail to the respondent. The learned Children's Court, whilst directing the release of the respondent on bail, has placed reliance on the Judgment of this Court in the case of **SUNIL MAHADEV PATIL Versus STATE OF MAHARASHTRA**: 2015 0 Supreme (Mah) 1186; wherein this Court has taken note of a situation where the prosecutrix was 15 years old and the accused was a 20 year old boy (as in the present case) who were in love and had eloped together. In these circumstances, this Court, directed release of the accused on bail.

5. I have heard Shri Rivankar, learned Public Prosecutor for the applicant and Shri Amit Palekar, learned Counsel for the respondent.

6. It is submitted by Shri Rivankar, learned Public Prosecutor that the prosecutrix was a child within the meaning of the Goa Children's Act, 2003 and the Protection of Children from Sexual

Offences Act, 2012 and, thus, her consent or consensual behaviour may not be relevant.

7. On the contrary, it is submitted by the learned Counsel for the respondent that, in case of a girl who has attained age of understanding and if there are circumstances to show that she had willingly accompanied the accused, these would be the circumstances relevant for grant of bail as has been rightly found by the learned Children's Court.

8. I have carefully considered the circumstances and the submissions made. It appears that the prosecutrix was aged 15 years and had a communication with the respondent on phone and both of them had agreed to go for a ride. The incident is alleged to have happened between 07:15pm and 09:30pm.

9. I have carefully gone through the Impugned Order passed by the learned Children's Court and I do not find any reason to interfere with the same. The learned Children's Court after placing reliance on the decision of this Court in the case of **SUNIL MAHADEV PATIL Versus STATE OF MAHARASHTRA**, has rightly exercised the discretion. Whilst doing so, the learned Children's Court has imposed appropriate conditions on the respondent so as to ensure that the bail is not

misused. In such circumstances, no case for interference is made out. In the result, the application is hereby dismissed.

C. V. BHADANG, J.

msr