

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.562 OF 2019

Prashant alias Pavan Kamlakar Chaulkar .. Applicant

Vs.

State of Maharashtra & Anr. .. Respondents

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Mr.Tejesh Dande a/w. Mr.Bharat Gadhavi, Mr.Vishal Navale and Mr.Vaibhav Kulkarni i/b. Mr.Tejesh Dande & Associates, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

Mr.P.B. Surve, PC, Dighi Sagri Police Station, Shriwardhan, District - Raigad, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 13, 2019.

P.C. :

The Applicant is seeking bail in connection with C.R.No.19 of 2018, registered with Dighi Sagri Police Station, Shriwardhan, District - Raigad, for the offences punishable under Sections 376(2)(i), 363, 366, 504 and 506 of Indian Penal Code ("IPC", for short) and under Sections 4, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 ("POCSO Act", for short). Investigation is completed and charge-sheet is filed.

2 The case of the prosecution in nutshell is that the victim was aged about 16 years and 5 months at the time of the alleged incident. In the month of May 2017, the victim had visited her friends house. She was introduced to Applicant by her friend. The Applicant used to meet her and there used to be talk on phone. On 20th May, 2017, the Applicant had allegedly entered into the house and committed sexual intercourse with the victim. Similar act was repeated on 27th May, 2017. On 2nd June, 2017, the victim returned to her house at Mumbai. The Applicant-accused used to make repeated calls to her. In July 2017, the accused met her near her house. Both of them went to a resort at Virar. She was thereafter dropped at home. Thereafter, the accused was trying to contact her. In November 2017, the Applicant-accused came near the school of the victim and took her to Borlipanchtan Kendra Navenegar, District-Raigad. He told his parents that the victim would be residing with them permanently. The family members of the Applicant-accused were also residing at the said place. There was physical relationship between Applicant and victim. On 10th March, 2018, the accused performed marriage with her in the presence of his parents and other relatives. The victim informed about the marriage to her mother. The mother of the victim visited the house of the victim.

However, the accused refused to send the victim with her. Thereafter the accused ill treated the victim. On 16th June, 2018, the victim left the house of the accused and went to her parental home. FIR was lodged on 17th June, 2018.

3 In pursuant to the order dated 27th August, 2019, the victim was joined as Respondent. It is reported that the victim at present is major. She is present in the Court. Learned APP took instructions from her. It is stated that the victim is not willing to join the Applicant-accused.

4 Learned Counsel for the Applicant drew my attention to the statement of the complainant and other documents on record. He also pointed out the photographs with regards to performance of marriage which is part of investigation papers/charge-sheet. It is submitted that the Applicant was aged about 20 years at the time of incident. The victim was aged about 16 years and 5 months. The relationship was consensual. Applicant is not having any criminal antecedents.

5 Learned APP submitted that consent is immaterial. At the time of incident, the victim was minor. The incident of sexual abuse was without her consent and hence Application be rejected.

6 I have perused the statement of victim. It is stated that the victim is acquainted with the Applicant. The incident of physical relationship had occurred on 20th May, 2017 to 22nd May, 2017. The statement also indicate that the victim had returned to Mumbai and in June 2017, she had visited the resort along with the Applicant. It is also stated that she had accompanied the Applicant to Borlipanchtan Kendra Navenegar, District-Raigad. She had visited the house of the Applicant and stayed there from November 2017 till 16th June, 2018. It also appears that the marriage was solemnized. The victim was apparently minor at the time of solemnization of marriage. The statement of the mother of the victim also indicate that the victim is in love with the Applicant. The relationship was apparently consensual. The victim was aged about 16 years and 5 months, which is age of understanding. The Applicant is in custody since last one and half year. Hence, case for grant of bail is made out.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.562 of 2019, is allowed;

- (ii) Applicant is directed to be released on bail in connection with C.R.No.19 of 2018, registered with Dighi Sagri Police Station, Shriwardhan, District-Raigad, on his furnishing PR Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (ii) Applicant shall report the concerned police station once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;
- (iii) Applicant shall not try to contact the victim till the conclusion of the trial and shall not tamper with the prosecution evidence;
- (iv) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)