

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

CRIMINAL BAIL APPLICATION NO. 1794 OF 2019

Gopal Kisanrao Chavan

...Applicant

Vs.

State of Maharashtra

...Respondent

- Mr. Mahindra B. Deshmukh, Advocate for the Applicant.
- Smt. A.A. Takalkar, APP for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JULY, 2019

P.C. :

1. The applicant is seeking bail in connection with CR No.496/19 registered at Pimpri Police Station, Pune for the offences punishable under Sections 366 and 376(2)(n) of the IPC and under Sections 3, 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The applicant is arrested on 30th March 2019.

2. The FIR is filed by the prosecutrix herself, who was around 17 years and 11 months of age at the time of lodging of FIR. She had stated in her FIR that she was studying in 12th Standard. She

was attending one coaching class, where the present applicant was a teacher and he was teaching Marathi and Hindi languages. In February 2017, the applicant made a proposal to her that he was in love with her and that he wanted to marry her. The prosecutrix initially refused, but thereafter on his insistence she agreed. On December 2017, applicant took her to a lodge where they had first sexual intercourse. Thereafter, the applicant used to take her to different lodges once or twice a month and they established physical relationship. However, subsequently the prosecutrix lodged her FIR.

3. Heard, Mr. Deshmukh, learned counsel for the applicant and Smt. Takalkar, learned APP for the State.

4. The learned counsel for the applicant submitted that the relationship was consensual and there was no force involved. He submitted that the prosecutrix had attained age of discretion and understanding. Therefore, though technically the offence is made out, but practically the prosecutrix was aware of the consequences of her act. The FIR was lodged belatedly. He, therefore, submitted that the applicant is in custody since 30th March 2019. Chargesheet

is filed. His further custody is not necessary till conclusion of trial.

5. Learned APP opposed the application on the ground that the offence is serious and consent in such case is immaterial. She further submitted that the investigation papers show that the prosecutrix was complaining to other teachers that the applicant was harassing her.

6. I have considered these submissions. The offence under Section 376(2)(n) of the IPC as well as offences under Sections 3,4,7 and 8 of the POCSO Act are clearly made out. Though it is the case of the prosecutrix and it is also submitted by the learned counsel for the applicant that the relationship was consensual, it is noteworthy that the applicant is 33 years of age and was a teacher. The applicant misusing his position, exploited the vulnerability of a minor girl. From the record it is clear that the applicant had exploited the victim for over a period of six months. The FIR is lodged in March 2019. Learned counsel for the applicant submitted that there was an unexplained delay in lodging the FIR. However, in such cases delay due to reluctance of the victim in lodging the FIR is understandable. At the time of lodging of the

FIR, the victim was 17 years and 11 months old. In the year 2017, she was even younger. At the first time the sexual intercourse took place, the victim was around 16 years 8 months of age. Considering, the stringent provisions of the POCSO Act and the purpose for which it is enacted and also considering the position of the applicant and exploitation of the victim girl, I am not inclined to grant the bail to the applicant. Hence, the application is rejected.

SARANG V. KOTWAL, J.)