

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

929 BAIL APPLICATION NO.1068 OF 2020

Shrirang @ Shriram Suresh Zalte ... Applicant.

Versus

The State of Maharashtra ... Respondent.

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Advocate for Applicant : Mr. A. R. Syed.
APP for Respondent-State : Mr. D. S. Jape.

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CORAM : V. K. JADHAV, J.
DATE : 08.10.2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.187 of 2020 registered with Jalgaon Taluka Police Station, District Jalgaon for the offences punishable under Sections 4, 8, 12 of the POCSO Act and Sections 363, 376, 366-A of the IPC. His application with similar prayer came to be rejected by the Additional Sessions Judge, Jalgaon, vide order dated 25.08.2020 in Criminal Bail Application No.564 of 2020.

2. The learned counsel for the applicant submits that the investigation is over and the charge-sheet has been submitted

in this case. On 22.05.2020, the victim was given in the custody of her parents, however, her statement came to be recorded before the Child Welfare Committee, Jalgaon on 28.05.2020. The learned counsel submits that it appears from the statement of the parents of the victim that on 28.05.2020 at their instance, the statement of the victim was recorded before the Child Welfare Committee. The learned counsel submits that as per the statement of the victim thrice the applicant has given mobiles to her to facilitate their conversation. It appears from the allegations that her parents found first two mobiles with her and thereafter the third mobile though found with her, it was returned to the applicant by the parents. As per the statement of the victim, she joined the company of the applicant on her own and travelled with him at various places. The learned counsel submits that the victim is 17 years and 9 months of the age at the time of alleged incident. The learned counsel submits that as per the history recorded in the medical examination report of the victim, the sexual intercourse has been done with consent and there was no history of assault. The concerned Medical Officer who has medically examined the victim has not given any

specific opinion. The learned counsel submits that the applicant has a fixed place of residence. The applicant is easily available for trial. The applicant is ready to abide the conditions, if imposed by this Court. The applicant may be released on bail.

3. The learned APP has strongly resisted the application on the ground that the applicant is 33 years of age almost double the age of the victim. The applicant is a married person and even then the applicant took the victim with him and committed sexual intercourse with her. The victim has not attained the age of 18 years and as such her consent is immaterial. The learned APP submits that there is a tear to the hymen which indicates about the sexual intercourse. *Prima facie*, there is a strong case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge-sheet particularly the statement of the victim, it appears that on 22.05.2020, the victim was given in the custody of her parents by the Investigating Officer. I do not find the statement of the victim recorded under

Section 161 of the Cr.P.C., however, it appears that the statement of the victim was recorded by the Child Welfare Committee on 28.05.2020. It is not explained as to why there is a delay of six days in recording her statement before the concerned authority. Furthermore, the copy of the statement of the victim if recorded under Section 164 of the Cr.P.C. before the Magistrate is also not the part of the charge-sheet nor the same is available in the file of the learned APP. It appears from the statement of the parents that after their intervention from 22.05.2020 onwards, on 28.05.2020 the statement of the victim came to be recorded before the Child Welfare Committee. On perusal of the said statement, it appears that the applicant and the victim well acquainted with each other. Initially, the applicant has given one mobile which she has accepted. It was given to facilitate the conversation between them. There is a reference in the statement of the victim that the said mobile was found by the brother of the victim and therefore the parents of victim had quarreled with her. In her statement, there is a reference of second mobile given by the applicant to facilitate their conversation. It is stated in the statement that after the second mobile was found by the

mother, the mother has given understanding to the applicant and returned the mobile to him. However, the applicant has given third mobile which again the victim has accepted and the mother has noticed the said mobile on 19.05.2020. There was a quarrel in the house on account of the said mobile. Thereafter on 20.05.2020 at about 9.30 a.m. the victim had joined the company of the applicant, they went to Shirpur and stayed in one hut. Even till 21.05.2020, the victim on her own voluntarily stayed with the applicant in one lodge at Chopada. It further appears from the history recorded in the medical examination report that the sexual intercourse has been done with the consent of survivor and there is no history of assault. Obviously, there are no positive findings about the sexual violence, injuries etc., however, there is a hymen tear. Though the learned APP has vehemently submitted about the age of the applicant and his marital status, however, it appears that the victim is also 17 years and 9 months old at the time of the incident. Thus, considering the entire aspect of the case, particularly the nature of the allegations, I am inclined to release the applicant on bail with certain conditions. Hence, following order :

ORDER

1. The application is hereby allowed.
2. The applicant Shrirang @ Shriram Suresh Zalte in connection with Crime No.187 of 2020 registered with Jalgaon Taluka Police Station, District Jalgaon for the offences punishable under Sections 4, 8, 12 of the POCSO Act and Sections 363, 376, 366-A of the IPC be released on bail on furnishing P.B. of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount on the following conditions :-
 - a] The applicant shall not tamper with the prosecution evidence in any manner.
 - b] The applicant shall not make any attempt to meet or communicate with the victim in any manner till the conclusion of the trial.
3. The application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-