

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 BAIL APPLICATION NO. 1132 OF 2020

SHIVPRASAD S/O. SAMBHAJI BHOSLE
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Nirmal Ramchandra J.
APP for Respondent-State : Mr. S. P. Deshmukh

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CORAM : V. K. JADHAV, J.
DATED : 13TH OCTOBER, 2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No. 48 of 2020 registered with Bori Police Station, District Parbhani for the offence punishable under Sections 363, 366-A, 376, 506 of IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. His application below Exhibit 7 in Spl. Case (POCSO) No. 86 of 2020 with similar prayer came to be rejected by the Special Judge (POCSO), Parbhani vide order dated 11.09.2020.

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2. Learned counsel for the applicant submits that investigation is over and the charge sheet has been submitted. Learned counsel submits that the victim has mentioned her age as 17 years and 7 months. However, during the course of investigation, the victim was subjected to radiological examination for age assessment and it has been opined by the radiologist that the approximate radiological bone age is in between 19 to 20 years. Learned counsel submits that on 05.06.2020 in broad day light at about 12.30 p.m., the victim had joined the company of the applicant and thereafter, traveled with him at several places. Though the victim has alleged in her statement that she had traveled with the applicant under threats, it is difficult to believe that the victim had no opportunity to complain against the applicant during the said journey or even during their stay at various places. Learned counsel submits that it is also not clear from the medical examination report that the victim was subjected to recent intercourse. Learned counsel submits that the applicant is in jail in connection with the present crime since long. There is no criminal

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history. The victim and the applicant were knowing each other from near about two years prior to the incident and the victim and the applicant used to talk to each other on motile phone. The victim was having the age of understanding. The applicant may be released on bail.

3. Learned APP has strongly resisted the application on the ground that the victim was less than 18 years of age on the date of the incident and as such, her consent, if any, is immaterial. Learned APP submits that during the course of investigation, the school leaving certificate of the victim was obtained and it appears from the said certificate that the victim is less than 18 years of age. Learned APP submits that the medical examination report indicates that there is possibility of forcible sexual intercourse. The victim has made allegations against the applicant about the threats extended to her and therefore she had joined the company of the applicant. It has been specifically alleged by the victim that against her will, the applicant has committed sexual intercourse with her. *Prima facie* there is strong case

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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 investigation papers, particularly, the statement of the victim, it appears that the victim and the applicant were knowing each other from two years prior to the incident and even they used to talk with each other on mobile phone. It further appears that on 05.06.2020 at 12.30 p.m., the victim had joined the company of the applicant. It has been stated that the applicant had given threats to the victim on her mobile phone and therefore she had joined his company and boarded the jeep brought by him. The victim could have reported the incident immediately in her house. However, as it appears from the allegations made by her father in the complaint that on 05.06.2020, it was informed to him by the wife of his brother that the victim left the house at about 3.00 p.m. under the pretext that she would pick up the blouse given by her to one Vasu tailor and thereafter, she did

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not return. Apart from this, even if it is assumed that the victim had traveled along with the applicant at various places, however, *prima facie* it is difficult to believe that the victim had no opportunity to complain against the applicant at those places. It further appears that so far as the allegations about commission of rape are concerned, there are variations in the police statement and in the statement of the victim recorded under Section 164 of Cr.P.C. before the Magistrate. The applicant is a young person 22 years of age. The applicant is available for trial. Furthermore, as per the radiological examination for age assessment, the radiologist has opined that the radiological bone age of the victim is between 19 to 20 years. Thus, considering the entire aspect of the case and since there is no criminal history, I am inclined to release the applicant on bail by imposing certain conditions. Hence, I proceed to pass the following order.

O R D E R

I. The application is hereby allowed.

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II. The applicant SHIVPRASAD S/O. SAMBHAJI BHOSLE be released on bail in connection with Crime No. 48 of 2020 registered with Bori Police Station, District Parbhani for the offence punishable under Sections 363, 366-A, 376, 506 of IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, on furnishing P.B. of Rs.20,000/- 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 conclusion of the trial.

III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

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