

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) No 79 OF 2020

Kishan Harijan @ Kishan Pawar
Presently in Colvale Jail, Thr.
Mahadev Uttam Harijan.

...Applicant

Versus

State of Goa, Thr. Police Inspector,
Bicholim Police Station, Bicholim.

.... Respondent.

Shri Parikshit Sawant, Advocate for the Applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the
Respondent- State.

Coram : NUTAN D. SARDESSAI, J.

Date : 04th August, 2020

P.C.:

Heard Shri Parikshit Sawant, learned Advocate for
the applicant and Shri Pravin Faldessai, learned Additional
Public Prosecutor on behalf of the State.

2. Shri Parikshit Sawant, learned Advocate for the
applicant contended that the complaint was lodged by the
father of the victim on 17.10.2019 and thereafter the
applicant was detained with the victim on 20.10.2019 at the
Sanguem Police Station. The statement of the victim was

recorded on 21.10.2019 which did not show any element of force. The complaint produced on record amply demonstrated that the victim lied to her parents and indicated that she had plans to go with the applicant. There were other statements on record which established the relationship between the applicant and the victim was a love relationship and therefore there was every reason to secure the applicant with the benefit of bail. The supplementary statement recorded of the victim was under duress and no credence could be given to it since it was a case of voluntary sexual intercourse between the applicant and the victim. He placed reliance in **S. Varadarajan v/s. State of Madras AIR (SC)942** and that of a learned Single Judge in **Sunil Mahadev Patil v/s. The State of Maharashtra [(2015) 3 AIR BomR (Cri) 594]**.

3. Shri Pravin Faldessai, learned Additional Public Prosecutor on behalf of the State contended at the outset that the judgment in **S. Varadarajan** (supra) was clearly distinguishable and was delivered on the merits of the case and so too the judgment in **Sunil Patil** (supra) which showed that there was a clear case of love relationship

between the applicant and the victim and besides a marriage too was solemnized between the two. Similar was not the case with the applicant in the present case and the consent of the victim was in any event not relevant looking to her age and being a minor in the circumstances of the case. He adverted to the order passed by the learned Additional Sessions Judge and submitted that there were clear findings to show that the victim was sexually assaulted by the applicant and even her photographs were clicked by a friend of the applicant and there were threats to her to make the photographs viral. There was no element of voluntariness at the instance of the victim in the act of sexual intercourse and therefore all the aspects canvassed on behalf of the applicant had to be considered on the merits of the case. The application had therefore to be dismissed. Last but not the least, the medical evidence clearly showed that there was penetration and taking all the facts into consideration the applicant was not entitled to the benefit of bail.

4. i have considered the judgment in **S. Vadarajanm** (supra) which was clearly delivered on the merits of the case arising from the judgment of conviction

rendered by the the learned Sessions Judge and where the aspect of taking and going was considered by the Hon'ble Apex Court in the light of the facts of the case at large before them. This judgment cannot in any manner aid and assist the applicant in pressing for his release on bail even after adverting to the statements pointed out on behalf of the applicant. The judgment in **Sunil Patil** (supra) too is clearly distinguishable and otherwise being of a learned Single Judge of this Court i.e. of a coordinate Bench and otherwise also not binding on this Court. Be that as it may, the statement of the victim though recorded as a supplementary statement clearly indicates that there was no element of voluntariness at her instance and that she was subjected to forcible sexual intercourse, her consent being of no consequence when she was a minor within the meaning of the POCSO Act as well as under the provisions of IPC.

5. The other aspect of the applicant's case that he has been in custody for the last more than 10 months is not a circumstance which can weigh in his favour looking also to the tender age of the victim girl and that it cannot by any stretch of imagination be construed that she had voluntarily

gone with the applicant and that she was not taken out of the custody of her parents to attract the offence under Section 363 IPC. The medical report too does not substantiate the case of the applicant for his release on bail looking to the tender age of the victim girl. The offence of rape is amply demonstrated from the records of the case placed for perusal and therefore the ingredients of the offence under Section 376 IPC are clearly attracted apart from those under Sections 4 and 8 of the POCSO Act.

6. i do not find any merit in the application which is accordingly dismissed.

Nutan D. Sardessai, J.

msr.