

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

CRIMINAL BAIL APPLICATION NO. 2715 OF 2019

Mrunal Suresh Dukhande ...Applicant

Versus

The Senior Inspector of Police
and Anr. ...Respondents

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Mr. Swapnil Wagh, Advocate for the Applicant.
Mr. S.R. Agarkar, APP for Respondent-State.
Mr. P.Pawar, P.S.I., Bhoiwada Police Station.

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CORAM : SANDEEP. K. SHINDE, J.
DATE : 16th JANUARY, 2020.

P.C.

Heard.

1. It is an application under Section 439 of Code of Criminal Procedure, 1973 ("Cr.P.C." for short).
2. Applicant is seeking enlargement on bail in Crime No.68 of 2019 registered with Bhoiwada Police Station for the alleged offences punishable under

Sections 363, 376, 313 of the Indian Penal Code, 1860 ("IPC" for short) r/w Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short).

3. Victim in her complaint had disclosed her age as 18 years. Prima facie, the said complaint was filed nearly after the year. Evidence is indicative of the fact that she had surrendered to the physical desires of the applicant out of her love and affection. It is so evident from the statement of the doctor, who had terminated her pregnancy which had occurred out of the said relationship. She had projected herself to be a wife of the applicant to the Dr. Vinisha Abhale who then after following the due procedure, terminated pregnancy of the victim.

4. Learned APP however contended that the age of the victim was 17 years and 9 months as on the date of the alleged incident for which, he seeks reliance on the victim's birth certificate. Besides the statement

of the doctor, it appears victim had refused to give the statement under Section 164 of Cr.P.C.

5. It further appears that in May, 2019 she gave in writing to the learned Judge that she had no complaint against him and that she had submitted to the physical desire out of her love and affection for him. Thus the evidence prima facie, suggests she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter surrendered to the physical desire of the applicant.

6. In view of the facts and circumstances of the present case, in my view, the stringent provisions of the POCSO, would not deter the Court to grant bail in order to secure the ends of justice. I have taken a similar view, in another case in Bail Application 2632 of 2019. Thus, taking into consideration the peculiar facts of the case, the present application is allowed.

7. The investigation in the case is over and the

charge-sheet has been filed. The Applicant has been in the custody since February, 2019.

8. The applicant is directed to be released on bail. Besides, the trial may not commence in near future. Prosecution for the trial can be secured by imposing conditions and hence the following order.

ORDER

(i) The applicant is directed to be released on bail in Crime no.68 of 2019 registered with Bhoiwada Police Station, on executing P.R. Bond for the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall not live in the vicinity of the victim until the conclusion of trial, the trial is expedited;

(iii) The applicant shall furnish the particulars of his residential address as well as permanent

address and mobile number details to the investigating officer within seven days from the date of his release on bail;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

9. The application is allowed in the aforesaid terms and disposed off.

10. It is made clear that observations made hereinabove shall be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

11. All concerned to act on the authenticated copy of this order.

(SANDEEP. K. SHINDE, J.)