

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

CRIMINAL BAIL APPLICATION NO. 3249 OF 2019

Sunil Dagadu Chavan

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Satyavrat Joshi i/b. Sachin T. Zalte, Advocate for the Applicant.
Ms Pallavi N. Dabolkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 10th FEBRUARY, 2020.

PC :

1. The applicant is seeking bail in C.R. No. 402 of 2018, registered with Narayangaon Police Station, Pune, for the offences punishable under Section 363, 376 (i) of Indian Penal Code, 1860 ('IPC' for short) and Section 4, 8, 12 of Protection of Children from Sexual Offences, 2012 ('POCSO' for short).

2. The First Information Report ('FIR' for short) was lodged on 28th November, 2018 by the father of victim. It was alleged that the victim is daughter of the complainant aged about 13 years 7 months. She is the student of 9th Standard. On 19th November, 2018, the victim girl was dropped in the school at about 8.30 a.m. by cousin of the victim. She did not return home till 6.00 p.m. Search was carried out to trace the victim. Enquiry was made with her

friend. However, it was revealed that the victim did not go to school. The complainant and others went to various places. However, the victim could not be traced. Hence, the FIR was lodged with the police under Section 363 of IPC.

3. On 26th November, 2018, the victim was traced with the accused at Kolhapur. Her statement was recorded on 27th November, 2018. In the statement, she stated that, about seven months ago she had called her cousin. However, she dialed a wrong number and by mistake the call was made to another person. Thereafter, she made calls on the said number and she got acquainted with the applicant. They developed friendship. They fell in love. On 19th November, 2018, she left with the applicant-accused and both of them went to Kolhapur via Pune. They stayed at the lodge. The applicant told her that they are going to marry and had sexual relationship with her on two to three occasion. Thereafter, they stayed at another premises and she was subjected to sexual intercourse by the accused. They went to temple and perform marriage. The victim was medically examined. Statement of witnesses were recorded and charge-sheet was filed.

4. The applicant preferred an application for bail before the Court of Sessions. The said application was rejected by Order dated

27th February, 2019.

5. Learned Advocate for the applicant submitted that the relationship was of consensual nature. Victim stated in her statement that she got acquainted with the applicant, after she had wrongly called him. They developed friendship and fell in love. The victim had voluntarily accompanied the applicant and both of them went to Kolhapur. They stayed together. Thus, the offence under Section 376 of IPC and under the provision of POCSO is not made out. The applicant is in custody from date of arrest and his further detention is not necessary.

6. Learned advocate for the applicant relied upon the judgment of the Supreme Court in the case of ***Satish Dabgar v/s. State of Gujarat***¹ and the order passed by this Court in the case of ***Sunil Mahadev Patil V/s. State of Maharashtra***². It is further submitted that the medical evidence does not support the prosecution's case that the victim was sexually assaulted. The applicant is a young boy. There are no criminal antecedents against him.

7. Learned APP submitted that the victim was less than 14 years. The applicant aged about 28 years. Victim was not of the age of understanding. She was enticed by the applicant and took with

¹ (2015) 7 SCC 359.

² Bom. C.R. (Cri.) 435.

him from the school and both of them went to Kolhapur. The applicant being senior to the victim, he should have understood the situation and ought not to have subjected the victim to sexual assault. The applicant had induced the victim that they are going to perform marriage and subjected her to physical relationship.

8. The victim is a girl aged about 13 years 7 months. She was student of 9th Standard. It is the case of the prosecution that, the applicant and the victim had left together and went to Kolhapur. The victim went to school. She had joined the applicant and both of them proceeded together from school. It is pertinent to note that the victim is minor girl aged less than 14 years. The applicant is aged about 28 years. In this circumstances, the applicant ought not to have taken the victim alongwith her from the school and proceeded to Kolhapur and stayed in the premises where he had sexual relationship with the victim. The victim has stated that there was sexual relationship between the victim and the applicant as the applicant told her that, they would marry. During medical examination she has provided history of sexual assault. The medical report mentions that the evidence of sexual intercourse/assault cannot be ruled out. The final opinion is kept pending. The decisions relied upon by the learned advocate for the applicant are not applicable in this case. The school leaving certificate collected by the

Investigating Officer refers the date of birth of victim 9th March, 2005. Considering the factual aspect of this matter, no case for grant of bail is made out.

9. Hence, I pass the following Order:

ORDER

- i) Bail Application No. 3249 of 2019, is rejected.

(PRAKASH D. NAIK, J.)