

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.25 OF 2021

Akash s/o Arun Sonawane

... Applicant

Versus

State of Maharashtra

... Respondent

.....
Mr. R. J. Nirmal, Advocate for the applicant.

Mrs. D. S. Jape, APP for respondent – State.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10th February, 2021

ORDER :-

1. Present application has been filed by the applicant - original accused No.1 who has been arrested in connection with Crime No.253 of 2020 registered with Kotwali Police Station, District Parbhani for the offences punishable under Sections 376(2)(n), 323, 34 of Indian Penal Code and under Section 4, 17 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the 'POCSO Act'). He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. R. J. Nirmal for the applicant and learned APP Mrs. D. S. Jape for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant came to be arrested on 29-08-2020 and since then he is in jail. The investigation is complete and charge-sheet has been filed. Perusal of the FIR would show that the prosecutrix has given her age as 19 years and date of birth as 03-02-2001, however, no such document has been collected by the Investigating Officer to prove her said age. She has stated that she developed love affair with the present applicant in the year 2016 and on 27-03-2016 at about 1.00 p.m., the accused had forcible sexual intercourse with her in his house. He used to give her promise to marry and time and again he has kept physical relations with her. In the year 2017 also, he has kept relations with her at his house. When she became pregnant from the applicant, she told the said fact to her parents. Her parents were not ready to keep her with them and they informed the said fact to the parents of the present applicant. The prosecutrix was requesting the present applicant to perform marriage with her, however, he told that he would perform the marriage after delivery. She has got daughter on 25-05-2018. After her delivery also, she continued to reside with the applicant and at that time, the applicant went to Pune in search of work. He used to come occasionally and was not talking with her, but used to assault her. Applicant refused to keep her in house in April 2020 and, therefore, she went to reside

with her mother in May, 2020. But since then, the applicant is not allowing her to come to his house, nor he is performing marriage with her and therefore, she lodged the report. The said contents of the FIR would show that she had kept the relationship with the applicant voluntarily and there is nothing to show on record that she was minor at that time. Now, since the evidence has been collected, the further custody of the applicant is not required. He is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the applicant appears to be admitting his relations with the prosecutrix. He is also accepting that daughter has been born to them due to the said physical relations. Taking into consideration the statements of the witnesses, especially the parents of the prosecutrix and the prosecutrix herself, she was minor when the first act was done by the applicant to her and it was forcible, therefore, he does not deserve any discretionary relief.

5. Since the contents of the FIR have already been reproduced, they are not reproduced again, but it can be seen from those contents that since 2017, till May, 2020, it appears that the prosecutrix was residing with the applicant. There was no marriage between them, but

then they have a child. DNA report suggest that the applicant and the prosecutrix are parents of the child. The question remains is about the delay. It is to be noted that when the informant says that when she disclosed the said fact about her pregnancy to her parents, then what prevented the parents from lodging the report. Further documents have been collected about the treatment taken by the prosecutrix during her pregnancy. It contains information about her family and various precautions those are required to be taken by a pregnant woman and results of her periodical checkups. In all these documents, she has given her age as 19 years. Why she would have concealed her age is a question. If she would not have concealed her age, then it could not have been noticed that she is minor and the authorities would have taken action at that time itself. It is to be noted that the school leaving certificate of the prosecutrix is collected. It gives her birth date as 03-02-2001, which will show that she was minor at the time of alleged incident, however, that document is required to be proved. But then again, it can be seen that she herself had given her age as 19 years, when she was taking treatment during her pregnancy. Though the parents were knowing about the said fact, have kept mum and their statements do not show as to why they had not lodged any report. In fact, their such silence may amount to an offence under the POCSO Act,

if the applicant is considered as minor at the time of alleged incident. Therefore, taking into consideration the voluntary acts and the inordinate delay, the applicant need not be kept behind the bars awaiting his trial. Hence, the application deserves to be allowed. Hence, following order :-

ORDER

- 1) Application stands allowed.
- 2) Applicant - Akash s/o Arun Sonawane, who has been arrested in connection with Crime No.253 of 2020 registered with Kotwali Police Station, District Parbhani for the offences punishable under Sections 376(2)(n), 323, 34 of Indian Penal Code and under Section 4, 17 of the POCSO Act, be released on P. R. Bond of Rs.30,000/- (Rupees Thirty Thousand) with two sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) Bail before Trial Court.

[SMT. VIBHA KANKANWADI, J.]