

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

16 BAIL APPLICATION NO.652 OF 2021

Shaikh Shoheb S/o. Shaikh Akhtar
Age: 19 years, Occu.: Labourer,
R/o.Datta Nagar, Hingoli,
District – Hingoli,
(At present in Jail)

..Applicant/
Petitioner
(Orig. Accused)

VERSUS

1. The State of Maharashtra
Through Police Station Officer
Hingoli (Town) Police Station,
Hingoli, Taluka & District – Hingoli,

2. XYZ,
Through C/o. Shaikh Usman Shaikh Ibrahim
Age: 48 years, Occu.: Business,
R/o. Mangalwara Bazar,
Dattanagar, Hingoli.

..Respondents

Advocate for Applicant : Shri Swapnil S. Rath
APP for Respondent No.1 : Smt.P.V.Diggikar

CORAM : M.G.SEWLIKAR, J.

DATE: 11th October, 2021

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. Facts in brief are that the informant/victim was 16 years of age at the time of incident. Applicant developed friendship with

the victim, which was converted into a love affair. In the month of February 2021, at the time of Eid festival, the applicant had called informant at his home and had sexual intercourse with her forcefully. The informant was not ready for that. The applicant had clicked the photographs of the informant and the applicant in compromising position. Some days later, the applicant called up the informant and expressed his willingness to meet her. The informant declined his request. Thereupon, the applicant threatened her that he had clicked her photographs in compromising position and he would make them viral. Therefore, on 2nd April, 2021 at 12:00 to 12:30 in the night the informant had gone to the applicant. At that time also the applicant had sexual intercourse with her by putting her in fear that he would make her photographs viral. Thereafter, she narrated this incident to her parents. Accordingly, First Information Report (FIR) was lodged on 6th April, 2021, on the basis of which offence under Sections 376(A), 376(B), 506 of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act came to be registered with Hingoli City Police Station, District Hingoli.

3. Heard Shri S.S.Rathi, learned counsel for the applicant and Smt.P.V.Diggikar, learned APP for respondent No.1-State.

4. Shri Rathi, learned counsel for the applicant submits that informant is 16 plus. The applicant is 19 years of age. Both of them are in love with each other. He submits that medical report does not indicate any sexual violence. He submits that considering age, the applicant be released on bail.

5. Smt.Diggikar, learned APP for respondent No.1-State does not dispute that medical report is against the informant. However, she submits that the allegations in the FIR are serious. At three stages the informant has consistently made allegations against the applicant. She submits that mobile is seized. It is sent to Chemical Analyzer but report is still awaited.

6. Medical report shows that hymen is intact. It further shows that the informant had no signs of tear on Labia Majora and Labia Minora. Clitoris is shown to be normal. At the time of the incident, the informant was more than 16 years of age and the applicant was 19 years of age. Applicant is of the age of understanding.

7. In the matter of Sunil Mahadev Patil vs. State of Maharashtra in Bail Application No. 1036/2015 on 3rd August, 2015, this Court (Coram : Mrs. Mridula Bhatkar, J.) has laid down

considerations for deciding bail application under Protection of Children from Sexual Offences Act. In paragraph No. 12 of the said judgment it is held thus :

12. The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered :

- (i) What is the age of the prosecutrix, who is minor*
- (ii) Whether the act is violent or not.*
- (iii) Whether there are antecedents or not.*
- (iv) Whether the offender is capable of repeating the Act or not.*
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.*
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.*
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.*

8. In the case of Anirudha Radheshyam Yadav vs. The State of Maharashtra reported in **LAWS(BOM) 2020-1-302**, it is held thus :-

4. So far as the offences punishable under Section 4, 6, 8 of POCSO Act (Special law) is

concerned, it may be stated that the provisions of this law are, though, stringent in nature, would not deter the Court to grant or refuse bail in order to secure the ends of justice. The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. It is not the case of the prosecution that the applicant had promised to marry her. Additionally, it is also not a case where under the misconception of the fact, she had served herself to the desire of the applicant for physical relations. No doubt, that the applicant, under the preview of POCSO Act, is a minor, however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant.

9. There is nothing on record to show that the applicant had clicked the photographs of the informant in inappropriate position. Charge-sheet is filed. Therefore, further detention of the applicant is not warranted. Similarly, no question of tampering of evidence will arise since the charge-sheet is filed. Applicant has roots in society. He is not likely to abscond and will be available for trial. In this view of the matter and considering the pandemic situation created due to Covid-19, trial is not likely to commence in near future, I am inclined to release the applicant on bail. Hence, the order:

ORDER

- i) Bail Application is allowed.

ii) Applicant be released on P.R.Bond of Rs.30,000/- (Rs.Thirty thousand only) with one solvent surety in the like amount, in connection with Crime No.0093 of 2021, registered with Hingoli City Police Station, Dist.Hingoli, under Sections 376(A), 376(B), 506 of the Indian Penal Code and Sections 4, 8 and 12 of the POCSO Act, and on condition that the applicant shall not keep any contact with the informant and shall stay out of Hingoli town till conclusion of the trial, except for attending dates fixed in Court during trial.

iii) Bail Application is disposed of.

iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M.G.SEWLIKAR)
JUDGE