

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 868 OF 2021

Wasim Tainur Sayyed

Applicant

Versus

State of Maharashtra & another

Respondents

Mr. N.P. Bangar, Advocate for the applicant.

Mr. P.G.Borade, APP for respondent/State.

Mr. Amol Gandhi, Advocate for respondent No. 2.

CORAM : M.G. SEWLIKAR, J.

DATE : 12th October, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 60/2021 registered with Ambhora Police Station, Beed, for the offences punishable under Sections 376(1), (2), (3), 354, 354(D), 506 of the Indian Penal Code and under Sections 3, 4, 11 and 12 of the Protection of Children from Sexual Offences Act.

2. Facts in brief are that the victim is the daughter of the informant. Her age was 14 years at the time of the incident. Her

date of birth is 3rd June, 2006. It is the prosecution case that the applicant, aged 22 years, used to eve-tease the victim and he had clicked her photographs. He used to force her to talk with him on Instagram and Snapchat on the pretext of defaming her on the basis of those photographs. In the month of December, 2020, the applicant had sexual intercourse with the victim in the house of uncle of the applicant. Informant had seen photographs of applicant and the victim in the cell phone of the victim. On these allegations, First Information Report came to be lodged on 14th June, 2021.

3. Heard Shri Bangar, learned counsel for the applicant and Shri Borade, learned APP for the State.

4. Admittedly, the date of birth of the victim is 3rd June, 2006. the incident took place on 14th March, 2021 which means that at the time of the incident the victim was close to 15 years of age. Learned counsel for the applicant invited attention of this Court to the statement of the victim recorded under Section 164 of the Code of Criminal Procedure in which she has stated that she had told her father that she was in love with the applicant. He placed reliance on judgment of this Court (Coram : Mrs. Mridula Bhatkar, J.) in the

matter of Sunil Mahadev Patil vs. State of Maharashtra in Bail Application No. 1036/2015 dated 3rd August, 2015, in which considerations for deciding bail application under Protection, of Children from Sexual Offences Act are laid down. 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.

5. 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.

6. It appears from the evidence collected and the statement of the victim under Section 164 of the Code of Criminal Procedure that the applicant and the victim are in love with each other. It further appears from the First Information Report that the victim had stored her own image and the image of the applicant in her cell phone. Learned APP submitted that medical evidence shows that hymen was ruptured. The conduct of the victim shows that she used to talk on Instagram and Snapchat with the applicant. She has also

stated in the statement under Section 164 of the Code of Criminal Procedure that she and the applicant are in love with each other.

7. Charge-sheet is filed. Applicant is resident of village Dhamangaon, Tq. Ashti, Dist. Beed. He has roots in the society. He is not likely to abscond and will be available for trial. He has no criminal antecedents. Having regard to these facts, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand) with one solvent surety in the like amount, in connection with Crime no. 60/2021 registered with Ambhora Police Station, Beed, for the offences punishable under Sections 376(1), (2), (3), 354, 354(D), 506 of the Indian Penal Code and under Sections 3, 4, 11 and 12 of the Protection of Children from Sexual Offences Act.
- iii) 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

dyb