

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 890 OF 2021

Rajkumar Uttam Padvi

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. Menezes Joslyn, Advocate holding for Mr. P.S. Paranjape,
Advocate for the applicant.

Mr. S.D. Ghayal, APP for respondent/State.

Mr. Y.H. Jadhav, Advocate for respondent No. 2.

CORAM : M.G. SEWLIKAR, J.

DATE : 12th October, 2021.

PER COURT :

1. Heard.

2. Victim was 16 years and 4 months of age at the time of the incident. Informant is the father of the victim. On 19th November, 2020, at 3.00 pm, when informant was on duty, he got a call from his wife that victim was not being seen in the house and she was searched everywhere but her whereabouts were not known. Informant immediately came home and conducted search of the victim. Informant came to know that applicant was also not there in

the village. Therefore, he lodged First Information Report on suspicion that victim was kidnapped by the applicant. On the basis of this First Information Report, offence under Sections 363 of the Indian Penal Code came to be registered and after investigation, charge-sheet came to be filed under Sections 363, 376(2)(n) of the Indian Penal Code and Sections 5(L) and 6 of Protection of Children from Sexual Offences Act came to be registered against the applicant.

3. Shri Menezes, learned counsel for the applicant submits that the age of the victim at the time of the incident was 16 years and 4 months which means she was of the age of understanding. She has given statement under Section 164 of the Code of Criminal Procedure that she is in love with the applicant and she had travelled with the applicant at many places. He submits that applicant is 23 years of age. He places reliance on the 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, and the case of Anirudha Radheshyam Yadav vs. The State of Maharashtra reported in **LAWS(BOM) 2020-1-302** (Coram : Sandeep K. Shinde, J.) dated 9th January, 2020.

4. Learned APP and learned counsel for the informant submit that the victim being minor was not capable of giving consent. Applicant had sexual intercourse with the victim. Therefore, offences as alleged have been clearly made out.

5. This Court in the matter of Sunil Mahadev Patil vs. State of Maharashtra (supra), has laid down the 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.

6. In the case of Anirudha Radheshyam Yadav vs. The State of Maharashtra (supra), 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.

7. In the case at hand, statement of the prosecutrix shows that she is in love with the applicant. She states that she is in love with the applicant since last three years but her parents are against

the same. Therefore, she eloped with the applicant. On 19th November, 2020, at about 3.00 pm, she went to Navapur Chaufuli from her house. Accused was already present there. Both of them went to Bardoli (Gujrat). They stayed there for one day and thereafter they went to village Loni Kalbhor, Dist. Pune. They stayed there from 21st November, 2020 to 28th January, 2021. She further stated in the statement that the applicant used to do work of sugarcane cutting in the field of Rama Kalbhor and both of them had sexual intercourse from 21st November 2020 to 28th January, 2021.

7. It is not in dispute that the age of the prosecutrix at the time of the incident was 16 years and 4 months. She was of the age of understanding and was capable of understanding the consequences of her act. In view of this, and in view of the law laid down by this Court in the matter of Sunil_Mahadev Patil vs. State of Maharashtra (supra) and Anirudha Radheshyam Yadav vs. The State of Maharashtra (supra), 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. 1496/2020 registered with Nandurbar City Police Station, Dist. Nandurbar, for the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code and under Sections 5(L), 6 of 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