

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

22 BAIL APPLICATION NO.906 OF 2021

Vishal s/o. Hiraji Kolte
Age: 26 years, Occu.: Service,
R/o. Kasliwal Tarangan, Mitmita,
Aurangabad. ..Applicant

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Chhavni Cantonment Police Station,
Tq. & Dist.Aurangabad.
And Another ..Respondents

...
Advocate for Applicant : Shri N.S.Ghanekar h/f.
Shri Jagdish V. Deshpande
APP for Respondent : Shri S.W.Munde
Advocate for Respondent No.2 : Shri V.C.Patil h/f.
Shri I.G.Durrani

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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 in connection with Crime No.0234 of 2021 registered with Cantonment (Chhawani) Police Station, District Aurangabad, for the offence punishable under Sections 376, 376(2)(i) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences (POCSO) Act.

2. Facts in brief are that the applicant is 26 years of age. At the time of incident, victim was 17 years of age. The victim had gone to her maternal uncle's place at village Dahid (Bk.), Taluka and District Buldhana. Since about two months, the victim was complaining of stomach ache. Therefore, maternal uncle and maternal aunt of the victim took her to the hospital of Dr.Archana Wabnere. On examination, victim was found to be pregnant of 11 weeks. On enquiry, victim told that brother in law of maternal sister of the informant i.e. applicant had established sexual relations with the victim as a result of which victim remained pregnant. First Information Report (FIR) was, therefore, lodged on 6th May, 2021. On the basis of which offence as aforesaid came to be registered against the applicant.

3. Heard Shri N.S.Ghanekar, learned counsel for the applicant and Shri S.W.Munde, learned APP for respondent No.1-State and Shri V.C.Patil, learned counsel for the informant-respondent No.2.

4. Shri Ghanekar, learned counsel for the applicant submits that as per investigation papers, date of birth in terms of the record of Gram Panchaya, Dahid (Bk.) is 30th December, 2003. He submits that the date of registration is mentioned as 22nd

January, 2003, which means before the actual birth could take place, entry of birth of the victim was taken which is incomprehensible. He further submits that on the basis of this record, School Leaving Certificate mentions the date of birth as 30th December, 2003. He further submits that he has produced birth certificate issued by the Municipal Council, Buldhana showing the date of birth of the victim as 30th December, 2002. He submits that there is variance between the two dates. Investigating Officer was directed to investigate into the matter but it seems that he has done nothing in this regard. He submits that if date of birth 30th December 2002 is accepted, victim is major. Therefore, the provisions of POCSO Act will not come into play.

5. Learned APP for the respondent No.1-State and learned counsel for the informant submit that in the certificate of birth issued by the Municipal Council, Buldhana, the name of the father of the victim is shown to be Bapu Janardhan Patil whereas name of father of the victim is Bapu Janardhan Sable. They further submit that the victim was pregnant of 11 weeks. DNA report is received, which shows that the victim and the applicant are the biological parents of the foetus. They submit that statement of the victim under Section 164 of the Code of

Criminal Procedure clearly shows that she was minor at the time of the incident and against her will, applicant had forceful sexual intercourse with her. They submit that offence being serious and punishable with imprisonment for life, applicant should not be released on bail.

6. The Investigating Officer has procured the certificate issued by the Gram Panchayat, Dahid (Bk.) showing date of birth of the victim as 30th December, 2003. Date of registration of the birth is 22nd January, 2003 which means about a year before birth of the victim, her birth was registered with the Gram Panchayat, Dahid (Bk.). This could have been called as a mistake. However, subsequent developments show the position otherwise.

7. Applicant has produced certificate issued by the Municipal Council, Buldhana in which date of birth is shown to be 30th December, 2002 and date of registration is shown as 9th January, 2003. From this document, it appears that date of birth of the victim is 30th December, 2002 which means on the date of the incident she was major. So far as discrepancy in the name of the father of the victim is concerned, in the birth certificate issued by the Municipal Council, Buldhana, name of father of the victim is

shown to be Bapu Janardhan Patil whereas the name of the victim is Gayatri Bapu Sable.

8. Learned counsel for the applicant submits that grand parents of the victim used the name as Patil. Prosecution was directed to take instructions from the Investigating Officer as regard the correct position in view of the discrepancy in these two certificates as regard the date of birth. The Investigating Officer has not produced any record to show that subsequent certificate issued by the Municipal Council, Buldhana is forged or fake. Even the informant has not filed any affidavit indicating therein that name of father of the victim is not Patil. In view of this apparent discrepancy, it appears that date of birth of the victim is 30th December, 2002.

9. From tenor of the FIR, it is seen that the victim did not offer any resistance to sexual advances by the applicant. Charge-sheet is filed. Applicant has no criminal antecedents. He is not likely to commit similar offence again. He was arrested on 7th May, 2021. Considering the pandemic situation having arisen because of Covid-19, trial is not likely to commence in near future. In view of this, I am inclined to release the applicant on bail by putting some stringent condition. Hence, the order:

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.50,000/- (Rs.Fifty thousand only) with one solvent surety in the like amount, in connection with Crime No.0234 of 2021, registered with Cantonment (Chhawani) Police Station, Dist.Aurangabad, under Sections 376, 376(2)(i) of the Indian Penal Code and under Section 4 of the POCSO Act, and on condition that he shall not keep any contact with the victim and shall not enter into the limits of Aurangabad City, till conclusion of the trial, except for attending the Court on the dates fixed during the 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