

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

17 BAIL APPLICATION NO.909 OF 2021

. Dipak alias Nikhil s/o Kiran Wani
Age: 23 years, Occu.: At present Nil,
R/o. Village Waradsim, Taluka-
Bhusaval, District : Jalgaon. ..Applicant

VERSUS

1. The State of Maharashtra,
through the Officer Incharge,
M.I.D.C. Jalgaon Police Station,
Jalgaon, District Jalgaon.
2. Mahesh s/o Tukaram Kolhe
Age: 33 years, Occu.: Labour,
R/. Near Hanuman Temple,
Rameshwar Colony,
Jalgaon, Tq. and Dist.Jalgaon. ..Respondents

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Advocate for Applicant : Shri Govind Kulkarni h/f.
Shri Devang R. Deshmukh

APP for Respondent No.1 : Shri G.O.Wattamwar
Advocate for Respondent No.2 : Shri Rohit Patwardhan
(Amicus Curiae)

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CORAM : M.G.SEWLIKAR, J.

DATE: 6th December, 2021

PER COURT:-

1. Heard.
2. Respondent No.2 is absent though served. No one has
registered appearance for him.

3. Shri Rohit Patwardhan, learned counsel is appointed as *Amicus Curiae* to represent respondent No.2.

4. It is alleged in the FIR that the informant is the maternal uncle of the victim. At the time of the incident, age of victim was 17 years and 6 months. She was staying with informant for D.Ed. Course.

5. It is alleged that on 26th January, 2021, victim said to the informant that she would attend flag hoisting ceremony in the College on account of Republic Day i.e. 26th January, 2021. She left the house at 7:00 a.m. on that day and did not return. Informant expressed suspicion on the applicant. Age of the applicant at the time of the incident was 23 years. Accordingly, the informant lodged missing report. Victim was traced. She stated that she was in love with the applicant. During the investigation, statement of the victim was recorded under Section 161 of the Code of Criminal Procedure. She stated in this statement that her parents had settled her marriage elsewhere which she did not approve of. Therefore, she decided to elope with the applicant. It is further stated in her statement that she had physical relations with the applicant. Therefore, offence under Sections 363, 366(A), 376 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 against the applicant. Applicant was arrested on 13th February, 2021.

6. Shri Govind Kulkarni, learned counsel for the applicant submits that applicant and the victim are in romantic relationship. He further submits that from her statement under Section 161 of the Code of Criminal Procedure, it is apparent that the victim was in love with the applicant and on her own volition she eloped with the applicant. He submits that victim was 17 years and 6 months of age at the time of the incident. She was of the age of understanding and was capable of forming the judgment about the consequences of her acts.

7. Shri G.O.Wattamwar, learned APP for the respondent-State and Shri R.P.Patwardhan, learned counsel for respondent No.2 submit that victim was not of consenting age at the time of entering into physical relationship. Therefore, offence under Section 376 of the Indian Penal Code and under Sections 4, 8 and 12 of the POCSO Act has been made out. They further submit that the applicant, if released on bail, is likely to pressurize the victim. Both of them submit that medical evidence corroborates that there was physical relationship between the applicant and the victim.

8. Charge-sheet has been filed. Admittedly, applicant at the time of the incident was of 23 years age and the informant was of 17 years and 6 months age. Now victim has attained the age of majority. Her date of birth is 14th May, 2003. In the month of May, 2021 she attained the age of majority.

9. From the medical examination report, it is seen that the Medical Officer has noted that there was old tear to hymen. It is also reported that no fresh injury to hymen was seen. Applicant was traced on 13th February, 2021 and on the same day medical examination was conducted. Therefore, it appears that medical evidence does not support contentions of the prosecution. Moreover, charge-sheet is filed. Therefore, there is no question of the applicant tampering the evidence or pressurizing the witnesses. Applicant has no criminal antecedents. He has permanent residence in village Waradsim, Tq.Bhusawal, District Bhusawal. To allay the fear of prosecution that applicant may pressurize witnesses, he can be directed to stay away from Bhusawal Taluka for which the learned counsel for the applicant has no objection. In view of this, 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.20,000/- (Rs. Twenty Thousand only) with one solvent surety in the like amount, in connection with Crime No.0040 of 2021, registered with MIDC Police Station, Dist.Jalgaon, under Sections 363, 366(A), 376 of the Indian Penal Code and under Sections 4, 8 and 12 of the POCSO Act and on condition that he shall stay away from entire Bhusawal Taluka, District Jalgaon and shall attend the dates fixed in the trial regularly and co-operate the trial Court to dispose of the trial.

iii) Bail Application is disposed of.

iv) Fee of Amicus Curiae is fixed at Rs.3,000/- (Rs.Three thousand only). It is to be paid through the High Court Legal Services Authority, Sub-Committee, Aurangabad.

v) 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