

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

986 BAIL APPLICATION NO.1200 OF 2021

ROHIT SHAM BHINGARDIVE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. R.R. Karpe, Advocate for the applicant

Mr. V.M. Kagne, APP for respondent No.1/State

Mrs. Ashlesha Kulkarni, Advocate (appointed) for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22nd DECEMBER, 2021.

ORDER :

1 Present applicant has been arrested, in connection with Crime No.374/2021 dated 19.06.2021 registered with Shrirampur (City) Police Station, Dist. Ahmednagar, for the offence punishable under Section 376, 376(2)(J), 376(2)(N), 354, 354(B), 354(D) of The Indian Penal Code, 1860 and under Section 4, 8 and 12 of The Protection of Children from Sexual Offences Act, 2012. It appears that the investigation is over and charge sheet has been filed before the learned Special Judge under POCSO Act bearing Special Case No.134/2021. Present application has been filed for regular bail

under Section 439 of The Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. R.R. Karpe for the applicant, learned APP Mr. V.M. Kagne for the respondent No.1/State and learned Advocate (appointed) Mrs. Ashlesha Kulkarni for the respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report would show that there is no direct or indirect evidence or even circumstantial evidence against the accused. He is aged 19. He has no criminal antecedents. He is falsely implicated in the offence. He is in jail since 19.06.2021. There is no question of tampering evidence of witnesses and applicant is ready to abide each and every condition.

4 It has been further submitted on behalf of the applicant that victim has lodged the FIR alleging that she resides with her mother, father and younger brother. It is alleged that her mother runs Bandhan Bachat Gat. Applicant had taken loan of Rs.25,000/- from said Bachat Gat in the month of December, 2020 and for the purpose of regular payment of installment he had taken cell number of victim's mother. It is stated that for payment of loan installment applicant used to visit the house of victim and she got acquainted with applicant. Thereafter, after some days the said acquaintance

converted into love affair. It is alleged that in the first week of January, 2021 applicant came to the house of victim. At that time, victim was alone in the house. Applicant told victim that she likes him and he loves victim. Thereafter, applicant sexually assaulted the victim and did videography in his cell phone. The applicant threatened her that if she discloses to anybody about the said incident he would show the said video to the villagers and would defame her as well as her parents. Because of fear she did not disclose the incident to anybody. But, thereafter, from time to time, applicant sexually assaulted the victim by threatening her. It is then submitted on behalf of applicant that since there was love affair between applicant and victim, her consent cannot be ruled out. Long tenure of physical relationship and non-disclosure thereof shows consent. Now, the investigation is over and the charge sheet is filed, therefore, physical custody of the applicant is not required. There appears to be much delay in lodging the First Information Report. Taking into consideration age of the applicant, applicant be released on bail. In fact, within a period of one month of First Information Report, the prosecutrix has performed marriage. It shows that she was mature enough. Applicant need not be kept behind the bars.

5 Per contra, the learned APP strongly opposed the application and submitted that the applicant is aged 19. He is presumed to have every

understanding capacity, but then the victim is minor. Her marriage will not absolve him. He has taken disadvantage of the innocence of the victim and sexually assaulted her. The medical report of the victim supports the prosecution story. When there is sufficient evidence on record the applicant does not deserve any kind of sympathy.

6 It is to be noted that the FIR has been lodged by the victim. It is specifically stated that victim is 15 years of age. No doubt, now, the investigation is over and charge sheet has been filed, therefore, the further physical custody only for the purpose of investigation is not required. But, at the same time, now, we are required to consider what is the evidence, that is collected against the present applicant. Applicant is aged 19. Medical examination of victim was done. It prima facie supports prosecution. Victim was only 15 years old, at that time, which is not even a marriageable age. Her consent cannot be so inferred as applicant intends. There is ample evidence against the present applicant, apart from the recovery of the clothes, statements of witnesses and the panchnamas.

7 Therefore, when there is ample prima facie evidence against him, he does not deserve discretionary relief to be released on bail. He was not supposed to take disadvantage of the innocence of the innocent girl.

Hence, following order.

ORDER

- 1 Application stands rejected.
- 2 The fees of the appointed Advocate is quantified Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

(Smt. Vibha Kankanwadi, J.)

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