

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1197 OF 2021

Gurunath Narayan Shitole

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Drupad S. Patil for Applicant.

Mr. S. H. Yadav, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 267 of 2020 registered with Shirol police station, Kolhapur, under sections 376, 366 and 363 of the Indian Penal Code (for short 'IPC') and under sections 4 and 8 of The Protection of Children from Sexual Offences Act, 2012.

2. The First Information Report (for short 'F.I.R.') was initially lodged under section 363 of IPC by father of the victim. The victim was 16 years and 10 months of age on the date of

incident. In the F.I.R. it is mentioned that, on 03/07/2020, somewhere during the night the victim left the house and she was not found. Therefore, on the next day, after taking search for her the first informant lodged this F.I.R. under section 363 of IPC. The investigation was carried out.

3. On 17/07/2020 the victim along with the present applicant came to the police station. The applicant was arrested and since then he is in custody. The investigation is over and the charge-sheet was already filed.

4. Heard Shri. Drupad Patil, learned counsel for the applicant and Shri. Yadav, learned APP for the State.

5. Learned counsel for the applicant submitted that the earlier statement given by the victim on 18/07/2020 clearly shows that, there was a love affair and the victim had left her house willingly and had accompanied the present applicant. Though there are allegations of sexual intercourse, it was a consensual relationship. The victim was 16 years and 10 months of age, therefore, though, technically she was a minor, she was able to understand consequences of her act. Learned counsel for the

applicant relied on some chits which were with the applicant. He submitted that, those chits show the nature of love affair between them and how the victim herself was suggesting that they should continue with their relationship.

6. Learned APP opposed this application and submitted that the defence of consensual relationship is not available to the present applicant considering that the victim was a minor.

7. I have considered these submissions and, in particular, I have perused the statements of the victim. Victim's first statement was recorded on 18/07/2020 by the police officers. In that statement she has categorically stated that the applicant was her good friend and they were having love relationship. She used to talk with the applicant on phone, but her family was opposed to this. Her family was in the process of fixing her marriage.

8. On 03/07/2020 the victim herself sent a message to the applicant using her father's mobile phone and told him that her family had become aware of their love relationship. This message was sent on 11:00p.m. It is her case that, then he suggested that they should elope and get married because her

family would never agree for their marriage. The applicant then came to her house and both of them went away on his two wheeler. First they went to Indapur. He gave her a fake Mangalsutra and bangles. Then they went to the house of his friend Akshay at Koledi, Dist. Raigad. They reached there late at night. The applicant requested Akshay to permit them to stay there for a few days. Till 15/07/2020 they stayed there. It is her case that, during that period they had physical relations whenever Akshay and his wife were not in the house. Finally, applicant's friend called him and told him that police were searching for them. Therefore, on 17/07/2020 the applicant and the victim went to Nagothane police station. Her another statement was recorded under section 164 of Cr.p.c. on 30/07/2020. In this statement, there are certain additions. It is mentioned that, after the applicant went to her house at 11:00p.m. on 03/07/2020 he told her that unless she accompanied him, he would create ruckus and, therefore, she accompanied him on his two wheeler. Then she had narrated about their stay at Akshay's house. However, at this time, she has stated that the applicant kept forcible physical relations

with her. Both these statements basically show that they were in love relationship and it was a consensual relationship. Though, in the second statement she has made some additions, but that statement was recorded after a few days and after she was staying with her family. Therefore, the improvements in this statement will have to be considered from different angle. In any case, love relationship is not denied in both these statements. The messages relied on by the learned counsel for the applicant are also important, though they are not forming part of the charge-sheet. In any case, it is beyond doubt that, the applicant and victim were in love relationship and the victim had voluntarily left her house with the applicant. She did not make any grievance to anybody including Akshay or his family. Both of them presented themselves at the police station on their own. Considering all these factors, though at this stage the defence of consensual relationship is not available with the applicant, his case can be sympathetically considered for his release on bail. His continued detention during the entire period of trial is not necessary. He can be granted bail.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 267 of 2020 registered with Shirol police station, Kolhapur, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)