

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1429 OF 2021

NITIN LAXMAN CHAVAN

)...APPLICANT

V/s.

1) THE STATE OF MAHARASHTRA

)

)

2) XYZ

)...RESPONDENT

Mr.Sanjeev Kadam i/b. Mr.Prashant Raul, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Mr.Shradha Sawant, Advocate for the Respondent No.2.

CORAM : V. G. BISHT, J.

RESERVED ON : 21st OCTOBER 2021

PRONOUNCED ON : 28th OCTOBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.366 of 2020 registered with Police Station Vaduj, for

offences punishable under Section 376, 366, 506 of the Indian Penal Code (IPC) and under Section 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO Act).

2 The applicant is the cousin of prosecutrix. According to prosecution, the applicant had approached the prosecutrix and expressed his desire to marry her. The prosecution alleges that on 26th September 2020, the applicant visited the house of the prosecutrix. The prosecutrix was alone in the house. The prosecution further alleges that after telling the prosecutrix that since both of them would marry, the applicant assaulted the prosecutrix sexually. The same act was repeated on 8th October 2020 and 20th November 2020. On 20th November 2020, the applicant took the prosecutrix to Vitthal Rukmini Mandir and with the help of bhatji performed marriage. After returning to the house, the prosecutrix narrated the incident to her parents who later on lodged the report.

3 Mr.Sanjeev Kadam, learned counsel for the applicant,

submits that the relationship between the applicant and prosecutrix is not disputed. Although on the date of lodging of complaint, it is shown that the prosecutrix was 17 years 8 months old, but having regard to the circumstances, the prosecutrix had attained the age of understanding and was fully knowing what she was indulging in. This being a case of consensual relationship and the fact that there are no criminal antecedents, the applicant deserves to be granted bail.

4 Mr.Dedhia, learned APP, on the other hand, opposed the submissions by contending that while solemnizing the marriage on 20th November 2020, the applicant used false Aadhar Card in order to show that the prosecutrix had completed the age of 18 years. Since, at the relevant time, the prosecutrix was minor and was sexually exploited by the applicant, the present application does not deserve consideration.

5 Mr.Shradha Sawant, learned counsel for respondent no.2/ prosecutrix-victim, has advanced similar submissions as

advanced by the learned APP. The learned counsel during the course of submissions also invited my attention to the statement of brother and sister of the prosecutrix.

6 From the First Information Report (FIR) of the prosecutrix/victim it is seen that on the date of lodging of the report, she was 17 years 8 months old and her date of birth as given in the FIR is 28th February 2003. Assuming that the prosecutrix was minor when the alleged incident of sexual assault took place, but if the chronology of events as given in the FIR is seen carefully then definitely it would be seen, prima facie, that both of them i.e. prosecutrix and the applicant were in consensual sexual relationship. Not only for the first time on 26th September 2020 both of them indulged in sexual activity but later on also, from time to time, the prosecutrix submitted herself to the sexual desire of the applicant. Although in the FIR it is alleged that it was against her will, but her conduct speaks loudly. This conduct goes to show that she was very well aware of the act, in which she was indulging in, with the applicant.

7 I have also gone through the statements of brother and sister of the prosecutrix who have parroted unisonly qua the contents of the FIR. Moreover, admittedly, the investigation is over and the charge-sheet has been filed. No criminal antecedents are brought on record. Having regard to the relationship between the prosecutrix and the applicant and considering over all circumstances of the case, in my considered opinion, the applicant deserves to be admitted on bail. Hence, the following order :

ORDER

- (i) Applicant – Nitin Laxman Chavan shall be released on bail in Crime No.366 of 2020 registered with Police Station Vaduj, on his executing P.R.Bond in the sum of Rs.20,000/- with one or two sureties in like amount.
- (ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

- (iii) The applicant shall attend the concerned Police Station on the first Monday of every month, till the Charge is framed.
- (iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (v) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)