

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1769 OF 2021

Nikhil Banda Hatalge .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Kedar J. Patil for the Applicant.
Mr.A.R.Kapadnis, APP for the State.

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CORAM: BHARATI DANGRE, J.
DATED : 7th JULY, 2021

P.C:-

1. The applicant, aged 23 years, is indicted in an offence punishable under Section 376 read with Section 506 of the IPC, when registered on 29th August, 2020 vide C.R.No.425 of 2020 with Ichalkaranji Police Station.

2. The offence was registered on a complaint lodged on 29/8/2020 by the prosecutrix, who has given her age as 20 years and having completed her vocational training and engaged in private service. The prosecutrix has stated that since the year 2018, she was working as Clerk with a bank.

3. The complaint which is lodged on 29/8/2020 refers to the acquaintance of the prosecutrix with the applicant and a

love relationship being blossomed between the two. She narrates that they were deeply in love with each other and the applicant had promised to marry her, though they belong to different communities. On the pretext of marriage, it is alleged that he established physical relationship with her in the year 2019 without her consent, though she is unable to give the exact date, when they had been to the lodge. The relationship, both emotional and physical, continued and when she insisted to perform the marriage, the applicant avoided. This entire episode was not made known to her parents. In the year 2020, the marriage of the prosecutrix was arranged with a third person and it is alleged that the applicant threatened her fiancée and when some phone call was received by her prospective in-laws impinging her character, the marriage was called off. This was the trigger point when the prosecutrix approached the police and lodged the complaint reporting about an incident, which had occurred in the year 2019.

4. The supplementary statement of the prosecutrix is recorded on 31/8/2020, where she disclosed for the first time that her age was 17 years 6 months 28 days in the year 2019. This she says so, after relying upon the evidence collected by the Investigating Officer and when the register of the lodge was included in the investigation papers. It is at this time, she realized that she was then a minor. This she says so because she was not able to recollect the exact date, when she had accompanied the applicant to the lodge. On the basis of the supplementary statement, the necessary provisions under the POCSO Act were also invoked.

5. The charge-sheet compiles an experience letter dated 14/11/2019 issued by the concerned bank in favour of the prosecutrix, certifying that the prosecutrix was working with the bank in various departments from 03/05/2017 and she has two years' experience to her credit. The prosecution has placed reliance on a document in form of School Leaving Register where her date of birth is recorded as 16/04/2001 and on that basis, case of the prosecution is that the prosecutrix was minor, on the date when the physical relationship was established and it attracts an offence in form of sexual assault against the minor girl, particularly when she has narrated in the complaint that it was against her consent.

6. Taking over all view of the material on record, it can be seen that the prosecutrix though minor, was capable of understanding the consequences of her act and in fact she was employed on the relevant date with two years experience and there is no reason why the applicant, who is also a young boy, would have suspected or doubted that she is a minor and would have intentionally sexually assaulted her being conscious of her as minor. When the prosecutrix approached the police, she herself gave her age as 20 years and revealed that she is employed in private service. If she herself is not aware of her age, the applicant surely is not expected to know that she is minor. This is a pure case of love relationship between the two young persons, gone sour. The allegation that the applicant had established physical relationship with the prosecutrix at a time when she was minor and it was without her consent, would be a subject matter of trial. However, in the

given facts and circumstances, the applicant cannot be incarcerated indefinitely pending the trial, particularly in the wake of pandemic, when POCSO trials are taking time to conclude and the applicant is incarcerated since 30/8/2020. He is entitled to bail, subject to the following conditions.

It is made clear that the observations made above are, *prima facie*, in nature and limited to the extent of disposal of the bail application.

: ORDER :

- (a) Application is allowed.
- (b) Applicant - Nikhil Banda Hatalge shall be released on bail in C.R.No.425 of 2020 registered with Ichalkaranji Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall not attempt to establish any contact with the prosecutrix by any mode.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

SMT. BHARATI DANGRE, J