

Anand

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

BAIL APPLICATION NO. 1573 OF 2019

Ajay Balasaheb Netke

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. Sanjeev Kadam a/w Ms Vilasini Balasubramanian i/b. Mr. Prashant Patil, Advocate, for the Applicant

Mr. S. V. Gavand, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 21.01.2021

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. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 221 of 2018 registered with the Rahimatpur Police Station, Satara, for the alleged offences punishable under Sections 363, 366A, 376(2)(i)(n), 506 r/w 34 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the Applicant submits that the

Applicant, a young boy, aged 21 years was in a relationship with the prosecutrix for about two years prior to the registration of the offences. He submits that when the offence was registered as against the Applicant, the prosecutrix was about 18 years of age. He submits that the relations, if any, between the Complainant / prosecutrix and the Applicant were consensual in nature and that only when the Applicant refused to marry her, as she was HIV positive, the aforesaid complaint / FIR was lodged. He submitted that the Applicant has no antecedents and that investigation is complete and charge-sheet is filed.

4. Learned APP opposed the Application.

5. Perused the papers. According to the prosecutrix, the Applicant was staying in the same locality and that they fell in love with each other and started meeting each other. She has stated that as she was HIV positive, the Applicant used to accompany her to the hospital to get her medicines. She has alleged that in June, 2017, when the prosecutrix and the Applicant went to Satara for taking medicines, the Applicant took her to Janaai Malaai hills and had physical relations with her, on the pretext of marriage. She has stated that everyone in the locality knew about their relationship. She has stated that she had physical

relations with the Applicant, as he had promised to marry her. According to the prosecutrix, despite promise to marry her, the Applicant refused to marry her stating that since she and her parents were HIV positive, his family members were against the said marriage. Pursuant thereto, the prosecutrix lodged a complaint / FIR on 29.12.2018, when she was about 18 years of age. From the history given to the Doctor, it appears that the prosecutrix and the Applicant knew each other for about two years and that there was a love affair between them and that the Applicant had promised to marry her. The Applicant is in custody since 29.12.2018. Investigation is complete and charge-sheet is filed. The Applicant has no antecedents.

6. Having regard to the peculiar facts as stated above, further detention of the Applicant is not warranted. Accordingly, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

(i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 15,000/-** with one or two local sureties in the like amount;

- (ii) The Applicant shall attend the concerned Police Station on the **first Sunday of every month** between **10:00 a. m. and 12:00 noon** for a period of 24 months from the date of release;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The Applicant to co-operate with the conduct of the trial and attend the trial Court on all the dates, unless exempted;
- (vi) The Applicant shall file an undertaking with regard to clauses (ii) to (v), in the Registry of the trial Court, within two weeks of his release;
- (vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order digitally signed by Personal Assistant / Private Secretary.

(REVATI MOHITE DERE, J.)