

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL BAIL APPLICATION NO. 2885 OF 2021**

|                          |               |
|--------------------------|---------------|
| Abhijit Lala Gaikwad     | ...Applicant  |
| Versus                   |               |
| The State of Maharashtra | ...Respondent |

Mr. Shailesh Chavan for the Applicant.

Ms. Anamika Malhotra, A.P.P for the Respondent-State.

Ms. Devyani Kulkarni appointed as an *Amicus Curiae* for the Respondent No.2.

**CORAM : REVATI MOHITE DERE, J.**  
**DATE : 7<sup>th</sup> OCTOBER, 2021**

**P.C. :**

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 129 of 2021 registered with the Satara Police Station, for the alleged offences punishable under Sections 363, 376(2)(n), 376(3), 366 of the Indian Penal Code; and under Sections 4,8 and 12 of the Protection of Children From Sexual Offences Act, 2012.
3. At the outset, learned Counsel for the applicant submits that

although, leave to amend to delete the name of the prosecutrix was granted, amendment has not been carried out properly, inasmuch as, the name of the victim has been encircled and not deleted and as such, the identity has not been concealed. Hence, learned Counsel for the applicant again seeks leave to amend to delete the name of the applicant. Leave granted. Amendment to be carried out forthwith.

4. Learned Counsel for the applicant submits that the relations between the applicant and the prosecutrix, aged almost 16 years, were consensual and that a perusal of the statement of the prosecutrix and her sister will reveal the same.

5. Learned APP opposed the application. Learned Counsel for the Respondent No.2 also opposes the application.

6. Perused the papers. According to the complainant (mother of the prosecutrix), the applicant was a distant relative and that he used to come often to their house. According to the complainant, on 13<sup>th</sup> March, 2021, when she returned home, she found her daughter aged 16 years missing. As the daughter did not return, her family members went in search of her, however, she could not be traced. Pursuant to threats, a

complaint was lodged as against the applicant. A perusal of the statement of the prosecutrix aged around 16 years shows that she had gone with the applicant on her own accord and that the applicant, after promising marriage, had physical relations with her. The statement of the prosecutrix's sister shows that the applicant would visit their house often and the applicant aged 20 years and her sister (prosecutrix) would close the room and sit and chat, whereas, she was made to sit in the hall. The question of consent would certainly not arise, inasmuch as, the prosecutrix was a minor. However, having regard to the peculiar facts, further detention of the applicant is not warranted.

7. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

**ORDER**

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial, except if the date in the trial Court falls on a Saturday;

(iii) The applicant shall inform his latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

8. The application is allowed in the aforesaid terms and is accordingly disposed of.

9. 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.

10. All concerned to act on the authenticated copy of this order.

**REVATI MOHITE DERE, J.**