

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

BAIL APPLICATION NO. 2644 OF 2019

Charan Lalaso Shinde ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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Mr. Sachin Babulal Chandan, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent No.1 – State.

None for respondent No.2/Complainant.

Mr. Rahul Balasaheb Kumbhar (Police Naik) Mhaswad Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 24th AUGUST, 2021.

PER COURT:

1. The applicant was arrested on 3rd October, 2018 in connection with C.R. No. 149 of 2018 registered with Mhaswad Police Station Dist. Satara. Initially the complaint was lodged with Mhaswad Police Station for offence under Section 363 of Indian Penal Code (for short “IPC”). Subsequently, Sections 376(3), 366(a) r/w Section 34 of IPC was invoked along with Sections 3 & 4 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’).

2. The case of the prosecution is that the victim girl aged

about 15 years had left the house on 18th September, 2018. She did not return home. The father of the victim girl lodged complaint on 25th September, 2018. The victim and the accused were traced at Satara. Supplementary statements of the complainant was recorded on 21st November, 2018 and 3rd October, 2018. The statement of the victim girl was recorded under Section 161 of Cr.P.C. on 1st October, 2018 and under Section 164 of Cr.P.C. on 10th October, 2018. The victim has stated that, she got acquainted with the applicant/accused. They fell in love. The accused purchased a mobile phone and presented it to the victim. They are used to be in contact with the said cell phone. They used to meet at fixed spot. There was physical relationship between them. On 18th September, 2018 she contacted the applicant on his mobile phone. Both of them decided to elope and perform marriage. At about 10.45 p.m. the victim met the applicant. The friend of the applicant dropped them at Mhaswad S. T. stand. They boarded the bus and proceeded to Pandharpur. They checked into a lodge and stayed there in the night. They purchased articles for performing marriage and thereafter, performed the marriage. They went to Vijapur in the State of Karnataka. They went to a lodge. There was physical relationship between them. Thereafter, they returned to Satara. Police apprehended them. They were handed over to Mhaswad

Police Station. On completing investigation, charge-sheet was filed.

3. Learned Advocate for the applicant submitted that the relationship was of consensual nature. According to prosecution the victim was minor aged about 15 years, on the basis of birth certificate. The victim in her statement recorded under Section 164 of Cr.P.C. stated that she has completed her education up to 12th Std. and her age is around 18 years. The victim in her statements under Section 161 & 164 of Cr.P.C. has admitted the relationship with the applicant and that they have performed marriage and she intends to be with the applicant.

4. Learned APP submitted that the victim was aged about 15 years. Her consent is immaterial. She was pregnant. The pregnancy was terminated. D.N.A. was conducted but the report is still awaited.

5. From the documents on record, it is apparent that the victim has left the house voluntarily. The victim and the applicant went to Pandharpur and Vijapur. They stayed together. They performed marriage. Statement under Section 164 of Cr.P.C. mentions that she is aged about 18 years. Her parents used to assault her. She left the house on her own. Her date of birth is 1st October, 2000. She has completed her education up to 12th Std.

at Uttar Pradesh. She has performed marriage in temple with the applicant/accused. She has no complaint against applicant. Since she has performed marriage with the applicant, she intends to join him and stay with him. The allegations against the applicant are false. Statement under Section 164 of Cr.P.C. was recorded on 10th October, 2018.

6. Learned counsel for the applicant had pointed out that the notice of hearing of this application was issued to the complainant and the affidavit of service is filed. The report submitted by learned APP from the concerned Police Station also indicate that the intimation about the hearing of this application was given to the complainant.

7. From the tenor of the statements of the victim it is apparent that she was in relationship with the applicant. She left the house and joined the applicant. They went to Pandharpur and Vijapur. They had performed marriage. There was physical relationship between them. Considering the factual aspects, further detention of the applicant is not warranted. Case for grant of bail is made out.

8. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No. 2644 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 149 of 2018 registered with Mhaswad Police Station, on executing P. R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The applicant shall not tamper with the evidence;
- (v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of ten weeks in lieu of surety;
- (vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)