

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1997 OF 2021

NANDAKUMAR AMRUT GHARAT)...APPLICANT

V/s.

**1) THE STATE OF MAHARASHTRA)
2) SMT.VANDANA KUMAR SHENGDE)...RESPONDENTS**

Ms.Anjali Patil, Advocate for the Applicant.

Mr.Ameet A. Palkar, APP for the Respondent – State.

Ms.Shraddha Sawant, Appointed Advocate for Respondent No.2.

CORAM : V. G. BISHT, J.

**RESERVED ON : 26th OCTOBER 2021
PRONOUNCED ON : 15th NOVEMBER 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.94 of 2018 registered with Police Station Navasheva,

Raigad, for offences punishable under Section 376(1), 354 of the Indian Penal Code (IPC) and under Section 3, 4, 5 and 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 Informant is mother of victim. On the date of lodging of First Information Report (FIR) the victim was 15 years old. On 22nd September 2018 the victim complained of abdominal pain and therefore, the informant took her to Sanjeevani Hospital, Jasai. After examination doctor revealed that the victim was pregnant. On being enquired the victim disclosed that on 13th June 2018, her neighbour namely accused Barkya Ramesh Gharat had called her in his house on the pretext that his mother is calling her and thereafter performed sexual intercourse. She further informed that after 5 to 6 days when she had gone to Bhairinath temple, another accused namely Nandakumar Amrut Gharat (present applicant) took her behind the temple and performed sexual act. Thus, accused Barkya Ramesh Gharat under the threats, thereafter, performed sexual intercourse 5/6

times and the applicant, behind the said Bhairinath temple, for 10/15 times. Accordingly, she lodged the FIR.

3 Ms.Anjali Patil, learned counsel for the applicant, at the very outset submits that the co-accused Preetesh @ Barkya Ramesh Gharat has been released on bail by this Court (Coram : P. D. Naik, J.) on 26th February 2020 and then took me through the order of this Court. According to the learned counsel there were consensual sexual relationship between the victim and the applicant. There is no Birth Certificate on record to conclusively establish that victim at the relevant time was 15 years old, although there is Bonafide Certificate but the same cannot be taken into consideration. Thus, according to the learned counsel, the applicant seeks parity. Also, investigation is completed. Charge-sheet has been filed and no useful purpose will be served by keeping the applicant behind the bars. Therefore, the applicant deserves to be released on bail, argued learned counsel.

4 Mr.Ameet Palkar, learned APP, on the other hand, opposed the submissions by contending that the ground of parity is not applicable in as much as the co-accused was released on bail on the ground that the DNA Report as against him is negative. Moreover, the victim at the relevant time was 15 years old. Having regard to the seriousness of offence, application deserves to be rejected, argued learned APP.

5 Ms.Shraddha Sawant, learned counsel for respondent no.2-informant, also advanced the same submissions and submitted that having regard to the age of the victim, consent is immaterial. Since the application lacks merit, the same should no be allowed, argued learned counsel.

6 Perused investigation papers including the FIR. FIR of the informant-mother itself goes to show the conduct of the victim. What is pertinent to note from the FIR is that the victim although many times encountered sexual instances not only with

the applicant but also with other co-accused without any resistance, her conduct is very loud and clear. She was knowing fully well as to the act in which she was indulging in.

7 Apart from above, although DNA Report does show that the applicant is the biological father of the child of victim, but he is also similarly placed along with other co-accused namely, Preetesh alias Barkya Ramesh Gharat, who has already been released on bail by this Court. The question is not as to who impregnated the victim but having regard to the age of the victim, both of them still exploited the victim sexually. I have also considered the conduct of the victim and for both these reasons, in my considered opinion, the present applicant cannot be treated differently than the co-accused who is already enjoying the fruits of bail.

8 For the aforesaid reasons, I am inclined to allow the application. Hence, the following order :

ORDER

- (i) Applicant – Nandkumar Amrut Gharat shall be released on bail in Crime No.94 of 2018 registered with Police Station Navasheva, Raigad, on his executing PR.Bond in the sum of Rs.25,000/- 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 Court proceedings regularly.
- (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 and stands disposed off accordingly.

(V. G. BISHT, J.)