

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2754 OF 2021

ANIL SHANKAR MALLAV

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Ghansham Jadhav, Advocate for the Applicant.

Mrs.P. P. Shinde, APP for the Respondent – State.

Ms.Megha Bajoria, Advocate for Respondent No.2.

CORAM : V. G. BISHT, J.

RESERVED ON : 26th NOVEMBER 2021

PRONOUNCED ON : 13th DECEMBER 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.I-1070 of 2020 registered with Police Station Lonikand, for offences punishable under Section 363, 366, 376 read with 34

AVK

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of the Indian Penal Code (IPC) and Sections 4 and 17 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 Informant is mother of victim girl aged 15 years. On 20th December 2020 she lodged a missing complaint in respect of victim daughter. During the investigation the victim and applicant were found in Darga at Golegaon. Victim's statement was recorded in which she stated that she got acquainted with the applicant, who later on expressed his love and proposed to marry her. On 19th December 2020, at about 12.00 p.m., she left her house and both of them proceeded towards Golegaon. According to her, applicant sexually assaulted her.

3 Mr.Ghansham Jadhav, learned counsel for the applicant, submits that at the relevant time, the victim was 15 years 3 months old. The learned counsel also invited my attention to statement of victim recorded on 23rd December 2020 as well her statement under Section 164 of the Cr.P.C. dated 7th

January 2021 before the 12th Judicial Magistrate First Class, Pune and submitted that a lot of improvement has been made in the subsequent statement, so made before the learned Magistrate. The learned counsel further invited my attention to the statement of prosecution witnesses, namely, Radhabai Kisan Mahajan and Ganibhai Sheikhlal Tamboli and according to learned counsel, these two witnesses, who had an occasion to meet the applicant and victim at Darga, nowhere stated that the victim ever complained of sexual assault. Having regard to the age of applicant and the fact that investigation is over, leading to filing of charge-sheet, no useful purpose would be served by keeping the applicant behind the bars. There are no criminal antecedents. Thus, the application deserves to be allowed.

4 Smt.P. P. Shinde, learned APP, on the other hand, opposed the submissions by contending that on the date of incident, the victim was minor. There is medical certificate showing that there was sexual assault and in such circumstances, the application does not deserve consideration.

5 Smt.Megha Bajoria, learned counsel for respondent no.2 has also submitted the similar submissions made by the learned APP.

6 Perused the investigation papers including the report of Medico Legal Examination pertaining to the victim. The first statement of victim was recorded on 23rd December 2020 from which it appears that when the applicant expressed his love and proposed to marry her, she on her own will, left her house and accompanied the applicant to Darga at Golegaon and resided there. According to her, there the applicant maintained physical relations. However, in the second statement recorded under Section 164 of the Cr.PC. before the learned Magistrate, she (victim) introduced a lot of new facts and it appears that even her brother had heard her conversation with the applicant and in turn had informed her grandmother. It further appears that when she had been to school, the applicant made her sit on his motorcycle on pretext that he would drop her at her residence but took her to the house of his uncle at village Urlikanchan and

from there to another village and lastly at Darga. There they met baba i.e. prosecution witness Ganibhai Sheikhlal Tamboli who was looking after the affairs of Darga and also a woman. In that statement, she also stated that the applicant maintained forcible physical relations.

7 If both the statements are read in proper perspective, then it would be seen that the statement given before the learned Magistrate was full of embellishments as to the manner of she being taken away from her school, contrary to the earlier statement, wherein she clearly stated that she had gone on her own. Be that as it may, the fact remains that she had accompanied the applicant.

8 Coming to sexual assault, there are two statements, one is that of Radhabai Kisan Mahajan, who at the relevant time was residing nearby Darga. She had also met the applicant and victim. Another statement already pointed out by me is that of Ganibhai Sheikhlal Tamboli i.e. baba, who was looking after the affairs of

Darga. Interestingly, according to victim, the applicant had committed forcible sexual intercourse and despite having ample opportunity, she never disclosed this fact to abovestated two witnesses.

9 Lastly, there is medical certificate wherein history given by the victim is that of consensual sexual intercourse.

10 All said and done, age of victim cannot be overlooked even if it was a consensual act. Having regard to her minority, that will not absolve the applicant from his sexual act performed on the victim. At the same time, it is also relevant to note the conduct of the victim.

11 From the statements so recorded, firstly by the Investigating Officer and then by the learned Judicial Magistrate First Class, it is quite clear that, at the relevant time, she had sufficient maturity and she was knowing the consequences of her act. Moreover, both of them were in relationship.

12 Having regard to the material on record and age of the victim and the fact that investigation is completed and above all, the capacity of victim to understand the things, no purpose would be served by keeping the applicant behind the bars.

13 In such circumstances, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Anil Shankar Mallav shall be released on bail in Crime No.I-1070 of 2020 registered with Police Station Lonikand, on his executing PR.Bond in the sum of Rs.20,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.

- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)