

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1303 OF 2020

Vainap Shashikant Mane

Applicant

versus

The State of Maharashtra

Respondent

Mr.M.A.Patil i/by V.R.Garad for applicant.

Ms.M.R.Tidke, APP, for State.

Mr.Omkar Mulekar for respondent no.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th April 2021

PC :

1. The applicant is seeking bail in CR No.548 of 2020 registered with Samata Nagar Police Station for offence u/s 363 of Indian Penal Code. Subsequently Sections 376(2)(i) r/w 34 of Indian Penal Code were invoked. Sections 4, 8 and 12 of POCSO Act were also invoked. The applicant was arrested on 5th July 2020.

2. The FIR was lodged by father of victim girl. The victim is abed about 15 years 10 months. According to first informant, on 4th July 2020, it was noticed that the victim was not in house. Search was carried out in the residential building and at that time the watchman informed that he had seen the victim running out of building compound with a bag. Search was conducted. She was not found. The brother of complainant informed him that even his daughter is not in the house. Hence FIR was registered against unknown person u/s 363 of IPC. Subsequently supplementary statement of

complainant was recorded on 9th July 2020. The victim was traced and her statement was recorded on 5th July 2020. She stated that she got acquainted with applicant-accused on Instagram group. Thereafter both of them started chatting. Sometimes they used to chat on video call. On 19th March 2020 the applicant told the victim girl that he is in love with her. She consented for the same. Thereafter the accused met her below her building. In June-2020 the accused had told the victim to send her new photograph. She complied the request. In June-2020 her cousin sister visited her house. The victim told her that applicant is her boy friend. On 15th June 2020 the applicant met her in the premises of school at Kandivali. Her cousin sister had also accompanied her. Thereafter both of them used to chat on Instagram. On 3rd July 2020 the accused sent message to the victim that they should marry and he would come to pick her up along with his friend. The accused also told her that they would stay in the house of his friend at Nalasopara. The victim informed about it to her cousin sister. Even she agreed to accompany her. On 4th July 2020 the applicant and his friend came near her building by auto rickshaw. The victim and her cousin sister came below the building without informing their parents. They reached Nalasopara. They stayed in the house of the friend of applicant. Thereafter they slept in the house of applicant's friend. The wife of applicant's friend was also present in the house. At that time in the mid night the applicant-accused had physical relationship with the victim girl. On the next day the father of victim visited Nalasopara along with police.

3. Statement of other girl who is aged about 12 years 7 months and who is the cousin of the victim girl was recorded on 6th August

2020. She stated that the victim is her cousin. She had visited her house and at that time she was informed by the victim that she has a boy friend who got acquainted with her on instagram and they are going to perform marriage. They used to chat on mobile phone. On 17th June 2020 she met the boy friend of victim. On 24th June 2020 the victim informed her that she is going to gallop with the applicant-accused. Hence she informed the victim that she would accompany her. Both of them left their respective houses with bags. They met applicant and his friend. They went to the house of the friend of applicant. The wife of applicant's friend was also in the house. On the next morning the victim girl informed her that she was subjected to sexual assault. The friend of the applicant was also arrested. Statements of witnesses were recorded. Medical examination was conducted. On completing investigation charge sheet was filed.

4. Statement of victim was recorded u/s 164 of Cr.PC on 5th October 2020. She has reiterated her version in the said statement. In addition to that she categorically stated that the applicant-accused had physical relationship with her and she had consented for the same. On the next day her father and Police visited the house of applicant's friend and they were brought to Police Station.

5. Learned counsel for applicant submitted that charge sheet indicate that applicant and the victim girl were in love with each other. The applicant is aged about 20 years. He has no criminal antecedents. The victim had voluntarily accompanied the applicant and there was sexual relationship.

6. Learned APP submitted that the victim girl was minor. She was aged about 15 years 10 months. Her consent is immaterial. Medical examination reports support prosecution case. Learned counsel for victim-complainant girl submitted that the victim was minor. She was subjected to physical relationship by the accused. Offence u/s 376 of IPC and under the provisions of POCSO Act is made out.

7. I have perused the charge sheet. The statement of victim girl indicate that she was closely acquainted with the applicant. They were in love. They used to chat repeatedly. Both of them then decided to perform marriage. She left the house with her cousin. There was physical relationship in the night of 4th July 2020 between applicant and the victim. In the statement u/s 164 of Cr.PC, she has stated that she has consented for the physical relationship. It is true that victim is minor. She is aged about 15 years 10 months. But her statement is very clear. The cousin sister of victim girl has voluntarily accompanied the victim girl. She was not subjected to harassment by the accused. The wife of the friend of applicant was present in the house where the victim and her sister stayed. Investigation is completed and charge sheet has been filed. In the medical history provided by the victim girl she has stated that she had given consent for the sexual intercourse. Considering these circumstances, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection

with CR No.548 of 2020 registered with Samata Nagar Police Station, Mumbai, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall report Samata Nagar Police Station once in three months on the first Saturday of the month between 11 am and 1 pm till further orders;

(iv) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties;

(v) Learned counsel appointed to represent the complainant shall be paid professional fees in accordance with Rules.

(PRAKASH D. NAIK, J.)

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