

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO.3001 OF 2019**

Dayaram Rajaram Gautam @ Ballu ] ...Applicant

Versus

The State of Maharashtra & Anr. ] ... Respondents

Mr. Durgesh Jaiswal a/w Mr. Vishal M. Deshmukh for Applicant.  
Mr. Y. Y. Dabake, APP for State.

**CORAM :- SMT. BHARATI DANGRE, J.**  
**DATE :- 22 MARCH, 2021**

**P. C. :-**

1. The Applicant came to be charge-sheeted in C.R.No.203/2019 registered at Malvani Police Station, which subsequently culminated into Special Case No.1064/2019 and is pending for trial in the Special Court, Dindoshi, Mumbai. The Applicant is charged under Section 376(2)(n) of the IPC read with Sections 4, 8 and 12 of the POCSO Act.

2. On perusal of the charge-sheet, it can be seen that the prosecutrix, at the relevant time of lodging the report on 23/02/2019, was aged 18 years, 3 months. In the complaint, she reported that she was knowing the Applicant for last 8 years as he used to stay in the

neighbourhood. For the last 2 years, the relationship between these two thickened and in 2018 and to be precise, in March 2018, the Applicant is alleged to have proposed her and under the pretext that he would marry her, performed an intercourse without her consent. In the FIR, it is alleged that the physical relationship was established without her consent. Thereafter, the incident was repeated at times and in January 2019 when she visited the doctor with the complaint of pain in abdomen, she realized that she was carrying a baby. When she attempted to contact the Applicant, initially she could not find him but later when she confronted him, he refused to perform marriage with her. It is in the backdrop of these allegations, the C.R. was registered. The victim girl delivered a child.

3. In the medical history reported when she was medically examined, the prosecutrix has narrated as under :-

*“As narrated by victim, she has known accused Ballu alias Dayaram Rajaram Gautam since 8 years as he stayed in the neighbourhood. They became friends over past 2-3 years and 1 yr. back victim alleges that accused proposed to her. Victim accepted proposal and they were in relationship since then. Victim alleges that accused had promised marriage. Victim alleges that between March to July 2018, they had unprotected consensual sexual intercourse multiple times. Victim alleges that in July 2018 accused went to his village to*

*attend his ailing mother and returned back in Sept. 2018 having married other woman. Victim alleges that she could not find accused after that to confront him. Victim began missing her periods and in Jan 2019 she was seen by a local doctor who confirmed pregnancy. Victim then narrated about accused to her family and they filed complaint with police.”*

4. From the said statement and the material compiled in the charge-sheet, it can be very well seen that the relationship between the prosecutrix and the Applicant was consensual and at the relevant time when the physical relationship was established, she was below 18 years and the consent of a girl who is minor in an offence of rape or under the provisions of POCSO Act will lose its significance. However, it can be seen that the prosecutrix had delivered a child and the child is now handed over to an orphanage. The DNA report establishing the paternity of the child is awaited. The Applicant came to be arrested on 23/02/2019 and since then he is in jail. Considering the nature of relationship shared by the prosecutrix and the Applicant as narrated by the prosecutrix herself and on consideration of the fact that the Applicant is behind the bars since 23/02/2019, the investigation being complete and the charge-sheet filed, the Application deserves to be released on bail.

5. This matter was heard by this Court (Coram : Revati Mohite Dere, J.) and the Applicant had placed on record an Affidavit,

undertaking that he will abide by the conditions imposed by the Court if he is released on bail and he will not travel out of the jurisdiction of the Court without its permission. In terms of the said commitment, an Affidavit has been placed on record by the Applicant on 2<sup>nd</sup> February, 2021. The same is taken on record. The Applicant shall abide by the said undertaking on being released on bail and on noting that he has failed to abide by any of the conditions, the order releasing him on bail shall stand revoked. Hence, the following order :

**ORDER**

- (i) The Applicant – Dayaram Rajaram Gautam @ Ballu – shall be released on bail on furnishing P. R. bond to the extent of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties of the like amount.
- (ii) The Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer.
- (iii) The Applicant shall not tamper with evidence.
- (iv) The Applicant shall make himself available as and when required by the Investigating Officer.

6. The Application is allowed in the aforesaid terms.

**(SMT. BHARATI DANGRE, J.)**