

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

954 BAIL APPLICATION NO.318 OF 2022

Ganesh Prakash Jundhare

...Applicant

VERSUS

The State of Maharashtra and another

...Respondents

...

Advocate for Applicant : Mr. Gondkarpatil Shubham P

APP for Respondent/State : Mr. G.O. Wattamwar

Advocate for Respondent No.2 : Mr. S.S. Chapalgaonkar

...

CORAM : S.G. MEHARE, J.

DATED : 14th JUNE, 2022.

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim.
2. The applicant has been prosecuted for the offence punishable under Sections 376(3), 344, 363 of the Indian Penal Code and under Section 4, 8, 12 of Protection of Children From Sexual Offences (POCSO) Act, 2012.
3. The learned counsel for the applicant would submit that there is absolutely no evidence against the applicant that he compelled the victim to elope with him. Referring to the statement of the victim dated 16.11.2021, he would point out that the victim forced him to take her away from her parent as they were torturing her. The applicant was not ready, but she forced him to take her with

him; therefore, he agreed. They resided together until 11.11.2021 when the police found them together. He referred to the medical reports and submitted that there were no injuries on the private part of either the applicant or the victim. He also referred to the report lodged by the father of the victim immediately on the date of the incident. He expressed apprehension about eloping her daughter with some unknown person. He also pointed out that the applicant had helped the father of the victim financially. Now he did not want to repay the money. Hence, he is forcing the victim to State against him. Recording her statement under Section 164 of the Criminal Procedure Code after 21 days of her arrival at her place shows that she was forced to state against the accused. He never forced her to have a sexual relationship with him. If she had any apprehension or no consent, she had many occasions to run away from the custody of the applicant, but she never attempted to run away. Therefore, her statement under Section 164 of the Criminal Procedure Code is doubtable. She might have given it under pressure from her parents. He would state that the applicant has been behind bars since 16.11.2021. He has to look after his family. The investigation is over, and the charge sheet is filed. The applicant is ready to co-operate with the investigation and ready to undertake that he will not tamper with the prosecution witness. To buttress his arguments, he relied on the case of Rohit Sukumar Sukate Vs. The State of Maharashtra and

another in Bail Application No.127 of 2022, decided at the Principal Seat at Bombay by order dated 06.04.2022 and the case of Sunil Mahadev Patil Vs. The State of Maharashtra, Bail Application No.1036 of 2015, decided on 03.08.2015 at the Principal Seat at Bombay. Referring to the case laws, papers and the charge sheet, he would submit that there is no propriety to keep the applicant behind bars. Hence, he may be released on bail.

4. Per contra, the learned counsel Shri Chapalgaonkar appearing for the victim, has vehemently argued that the consent of the minor is immaterial. The applicant could have abused the victim, who was a minor though she forced him to take her with him. The applicant is married and must know the consequences of eloping with a minor girl. The minor girl is required to be protected. He referred to the statement of one landlord and pointed out that they hired a room without disclosing their relationship. He tried to show the conduct of the applicant. He has expressed apprehension of tampering with the prosecution witness and danger to the life of the victim. He has strongly opposed the application and prayed to dismiss the bail application.

5. Learned APP would submit that the offence is serious. A minor girl has been exploited sexually by a married person. The applicant and the victim are the relatives; therefore, there are great chances of forcing the victim to favour the applicant. The overall

conduct of the applicant shows that the victim was completely under the influence of the applicant, and he may again take the disadvantage of the same. If in the event the Court arrives at a conclusion to grant the bail, stringent conditions of not residing in the village shall be imposed.

6. Perused the charge sheet and application. It is not in dispute that at the time of the incident the minor was around 16 years and she eloped with the applicant. It is also not in dispute that the applicant and victim are relatives. The papers further reveal that they got acquainted in the field of the applicant, which was adjoining to the house of the victim. They have developed relation; however, till she eloped, her father never made any complaint. The victim also did not make a complaint that the applicant had committed forceful sex with her. Her specific statement reveals that she called the applicant and forced him to elope. Initially, he did not agree. He agreed to take her with him when she told him that her parents were torturing her. They resided together for about two months. The parents of the victim never raised suspicion against the accused. It is apparently the case of the consensus of the victim.

7. The learned counsel for the victim argued that she was a minor; therefore, her consent was immaterial. The applicant has an opportunity to convince her and her parents.

8. It is evident from the record that she left her home on her

own. She had called the applicant. The absence of an objection at any point in time by the victim is one of the circumstances that have to be considered in this case. Each case has to be decided on its own facts; however, the case of POCSO Act is a matter of concern, but it is also to be considered how long the accused be kept behind bars. The purpose of keeping the person behind the bars is that he should not intervene in the fair investigation and not tamper with the witness. Once the investigation process is completed, and the charge sheet is filed, the case is to be looked at from a different angle.

9. After having gone through the facts of this case, there appears point in submission of the learned counsel for the applicant that the possibility of pressurizing or threatening the victim to State against the accused in the statement under Section 164 of Criminal Procedure Code cannot be ruled out. The statement under Section 164 is apparently contrary to what she had stated before the police the first time. Learned counsel for the victim submitted that when police recorded her statement, her parents were not with her. But he has no case that her statement was not recorded as per her say as she was forced to give the statement as it was recorded by the police. No doubt, the minor girl may be protected but the conduct of the victim is also equally important. At the cost of repetition, it is to be stated that it is the victim who forced the applicant to take her with him. The reason was also coming up before the Court that her parents

were torturing her. The overall facts of the case permit this Court to exercise the discretion under Section 439 of the Criminal Procedure Code. However, the apprehension of the prosecution of tampering with the evidence may be guarded by imposing certain conditions. Hence, the following order :

ORDER

- I) The application is allowed.
- II) The applicant, Ganesh Prakash Jundhare shall be released on bail in Crime No.338/2021 for the offence punishable under Sections 376(3), 344, 363 of the Indian Penal Code and under Section 4, 8, 12 of Protection of Children From Sexual Offences (POCSO) Act, 2012 registered with Kopargaon Taluka Police Station, District Ahmednagar on executing P.B. and S.B. of Rs.25,000/- (Twenty Five Thousand) with one solvent surety in the like amount, on the condition that :
 - a) He shall not enter the place of the victim.
 - b) He shall not tamper with the prosecution witness.
 - c) He shall not contact the victim in any way.
 - d) He shall attend the trial on each date and co-operate for the early conclusion of the trial.
- III) Bail before the learned Sessions/POCSO Court.
- IV) Hamdast allowed.

(S.G. MEHARE, J.)