

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

953 BAIL APPLICATION NO.437 OF 2022

GOVIND SUBHASH PAWAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Naik Thigle Girish K.
APP for Respondent-State : Mr. V. S. Badakh.
Advocate for Respondent No.2 : Adv. S. L. Awchar.

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CORAM : S. G. MEHARE, J.
DATE : 15.06.2022

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the State and learned counsel for the victim / respondent No.2.

2. The complainant, a minor girl, registered the FIR against the applicant, alleging that the applicant followed her every morning. On 23.12.2021, when she was going for tuition, the accused said to her that "he like her and wanted to marry her". She told him that "she is running sixteen only and wanted to study". The applicant / accused requested her to go to Hyderabad and said to her that they would marry. So she agreed to

go with him. On the same day, he took her to Hyderabad. At about 3.00 p.m., they received a phone call from their parents requesting them to return home and they will marry them. Therefore, they immediately returned home on 24.12.2021. It has been specifically mentioned in the FIR that her parents explained to her that she was a minor and, taking advantage of her innocence, the accused took her to Hyderabad. On the basis of this FIR, the crime is registered against the applicant, and he has been behind the bar for the last six months.

3. Learned counsel appearing for the applicant pointed out that subsequent to the registration of the FIR, a new story of forceful sexual intercourse was developed, and the offences under POCSO Act were added to the crime. He would submit that the entire FIR is silent as regards the sexual assault with the victim. He would refer to the medical report and try to convince the Court that they were no physical injuries on the person of the victim. There is no direct evidence of forceful sexual assault with the victim committed by the applicant / accused. There is variance in the birth date

of the victim. However, he fairly conceded that she was between 16 to 17. The applicant is also a young and college-going boy. He never had sexual intercourse with the victim, but due to some misunderstanding, the parents of the victim forced the victim to lodge a false report. The charge sheet has been filed. Nothing remained to be investigated. Therefore, he may be released on bail.

4. Learned APP would submit that during the investigation, it is transpired that prior to lodging the FIR, the applicant did sex with the minor girl. Since the victim is a minor, her consent is immaterial. A detailed statement of the victim has been recorded, giving the date wise incidents. If the applicant is released on bail, he may influence the victim, and the trial may be affected.

5. Learned counsel appearing for the victim would submit that the accused made her fall prey to his words, and he had promised her to marry. She was not able to make an appropriate decision being minor. The offence is serious. The applicant is influential, so he may

tamper with the prosecution witnesses. Hence bail should not be granted to him.

6. Perusal of the record reveals that in FIR, there are absolutely no allegations of sexual assault. It seems that for the first time on 23.12.2021, the applicant had expressed his love to the victim and offered her that he wanted to marry her. She did not raise an objection to the marriage proposal of the applicant but went with him to Hyderabad. On the same day of reaching Hyderabad, they returned home after receiving a phone call from their parents, who promised to marry them. In the supplementary statement, the victim levelled the allegation of repeated sex. Usually, the cases are developed and ruined by recording exaggerated supplementary statements. All the sides have argued at length, but nobody has a clear answer to what happened immediately after the return of the victim and accused to their village on receiving the phone call from their parents. Be that as it may, there were no allegations of any forceful sexual intercourse committed by the accused with the victim, and the story of the sexual assault has been developed subsequently. The

applicant is behind the bar for a sufficient period of six (6) months. The investigation is over. Considering the facts and circumstances, there are no grounds to keep the applicant behind bars. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) The applicant Govind Subhash Pawar be released on bail in Crime No.384 of 2021 registered by Police Station Hatta, Taluka Basmath, District Hingoli, on furnishing P.B. and S.B. of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount on the following conditions that;
 - (a) The applicant shall not enter the village where the victim and his family reside for four (4) months from today.
 - (b) The applicant shall not contact the victim or her parents and also not try to influence the victim.

- (c) The applicant shall co-operate with the trial.
- (iii) Bail before the learned Sessions Court.
- (iv) *Humdast* allowed.
- (v) Fee for the learned counsel for the victim is quantified at Rs.5,000/-.

(S. G. MEHARE, J.)

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vmk/-