

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

BAIL APPLICATION NO.557 OF 2022

Ashwin @ Bhurya Yuvraj Nikam ... Applicant

Versus

1. The State of Maharashtra

2. X.Y. Z. ... Respondents

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Mr. Vijay B. Patil, Advocate for Applicant

Ms. V.S Choudhari, APP for Respondent No.1 / State

Mr. Jitendra Patil, Advocate for Respondent No.2

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CORAM : SARANG V. KOTWAL, J.

DATE : 07th JUNE, 2022

PER COURT:-

. The applicant is seeking his release on bail in connection with C.R.No. 0457 of 2021 registered at Chalisgaon Gramin Police Station, Dist. Jalgaon on 29.12.2021. The First Information Report (for short 'F.I.R.') was lodged under section 363 of the Indian Penal Code (for short 'IPC'). Subsequently, sections 366, 376(2)(j)(n) of the IPC and sections 4, 5, 6, 8 , 9 and 10 of of Protection of Children from Sexual Offences (POCSO) Act, 2012 were added.

2. The applicant was arrested on 25.02.2022 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. Heard Mr. Vijay B. Patil, learned counsel for the applicant, Ms. V.S.Choudhari, learned A.P.P for respondent No.1 / State and Mr. Jitendra Patil, learned counsel for respondent No.2.

4. Learned counsel for the applicant submitted that the victim had given a statement wherein she had stated that there were no physical relationship between her and the applicant. The victim wanted to run away from her house because her father had fixed her marriage against her will. He submitted that considering her statement, the applicant deserves a sympathetic view.

5. Learned A.P.P. as well as learned counsel for respondent No.2 opposed this application. They have relied upon the statement of the victim recorded on 08.01.2022 before the Child Welfare Committee, Jalgaon, wherein the victim has stated that the applicant had established physical relations with her. Both the learned counsel contended that the victim and the applicant were living together like husband and wife and at that time the

applicant had established the physical relations with the victim. The bail should not be granted to the applicant.

6. I have considered these submissions. Initially, the FIR was lodged by the father of the victim. He has stated that the victim's birth date is 29.05.2004. She was having friendship with the applicant. Though the parents had scolded her, she had continued her friendship with the applicant. On 28.09.2021, the victim was not found in the house. On this basis the F.I.R. was lodged under section 366 of the IPC. The investigation was carried out and her statement was recorded.

7. Learned counsel for the applicant has rightly submitted that on 06.01.2022, the statement of the victim was recorded. The victim has protected the applicant. She has stated that her father had fixed her marriage against her wish with a boy at Chalisgaon on 30.09.2021. The victim did not want to marry that boy. She told this fact to the applicant and both of them decided to elope. She has further stated that they took a house on rent. The victim and the applicant used to tell the neighbors that they were husband and wife. They used to work in an agricultural field for their livelihood. She has further stated that the applicant told her

that when she attained the age of majority, they would get married. She has categorically stated in that statement that the applicant did not establish any physical relations with her and he did not force the victim.

8. On 06.01.2022, the police came there and took them to the police station. The applicant was arrested. The victim's 2nd statement was recorded on 08.01.2022 before the Child Welfare Committee in which she had narrated the same story and added that they had established physical relations. Therefore, the provisions of the Protection of Children from Sexual Offences (POCSO) Act, 2012 were added. The medical evidence shows that though there were no injuries found, the possibility of sexual intercourse could not be ruled out. The victim's statement clearly shows that she was reluctant to get married with the boy of her parents' choice. She was pressurized to marry against her wish. The applicant helped her in avoiding that marriage. Under these circumstances, a sympathetic view towards the applicant needs to be taken. The victim stated in her 2nd statement that the applicant had established physical relationship with her. Her Statement before the police recorded in presence of the Committee Member of Vigilance Committee. Her statement protecting the applicant can

not be ignored. Therefore, I am inclined to grant benefit to the applicant only for consideration of bail. The trial Judge shall decide the trial on its own merit.

9. Hence, the following order:

ORDER

(i) In connection with C.R. No. 0457 of 2021 registered at Chalisgaon Gramin Police Station, Dist. Jalgaon, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

(ii) The Application is disposed of accordingly.

[SARANG V. KOTWAL, J.]

S.P Rane