

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

BAIL APPLICATION NO.612 OF 2022

Vishal @ Atharva s/o. Rajesh Tayade

..Applicant

Vs.

The State of Maharashtra and anr.

..Respondent

Mr.S.G.Magre, Advocate for applicant

Mr.N.T.Bhagat, APP for respondent no.1

Mr.P.D.Jarare, Advocate for respondent no.2

CORAM : R.G. AVACHAT, J.

DATE : JULY 25, 2022

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0042 of 2021 registered at Basmat Rural Police Station, Dist. Hingoli.

2. Heard learned counsel appearing for the parties.

3. Learned counsel for the applicant would submit that it is a case of consensual relationship. The victim is more than 16 years of age. The applicant is 22 years old. It was the victim who, on her own, had joined the applicant and stayed with him for three days. They had to come back only on intervention of police. Learned counsel would

submit that it will take time for commencement and conclusion of the trial. Considering the age of the applicant, learned counsel urged for grant of bail.

4. Learned APP and learned counsel appointed to represent the victim would, on the other hand, submit that the victim was below 18 years of age. Her consent was, therefore, immaterial. Her statement recorded under Section 164 of the Code of Criminal Procedure implicates the applicant in the offence in question. The victim's medical screening report supports the case of prosecution. Both of them, therefore, urged for rejection of the application.

5. Considered the submissions advanced. The FIR was lodged by the father of victim. From the statement of the victim, it appears that it is a case of emotional involvement. The victim was 16 plus but below 18 years of age. Her consent is, therefore, immaterial. The medical examination report does not indicate age of hymenal rupture. The applicant is 22 years of age. On investigation, the charge sheet has been filed. It will take time for commencement and conclusion of the trial. The age of the victim is to be proved during trial of the case. In the factual backdrop, the application deserves to be allowed.

6. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.0042 of 2021 registered at Basmat Rural Police Station, Dist. Hingoli, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence in any manner.

(iv) Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.6,000/- (Rupees Six Thousand).

[R.G. AVACHAT, J.]

KBP