

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1598 OF 2022

Krushna @ Kumar s/o. Ranba Dipke,
Age 25 years, Occu. Labour,
R/o. Ranjona, Tq. Vasmat, Dist. Hingoli. .. Applicant

Versus

1. The State of Maharashtra
Through Police Station Hatta,
Tq. Vasmat, Dist. Hingoli
2. X.Y.Z. .. Respondents

Mr. U. B. Bilolikar, Advocate for Applicant;
Ms. V. S. Choudhari, APP for Respondent No.1;
Mr. G. R. Ingole, Advocate for Respondent No.2

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CORAM : S. G. MEHARE, J.

DATE : 06-12-2022

PER COURT :-

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

2. The victim and the applicant had love affair. It was spread in the village. Her family opposing their affair stopped their talk. However, the applicant was talking to her on phone and writing love letters. One night, he took her out of her home and did sex with her in the sugarcane field. It has been alleged that when the

applicant did sex with her, she was about 13 to 14 years. On 03.06.2022, the applicant made a phone call to the victim and called her out from her house. She denied to come. However, on the next day, he called her near her house at 12.00 a.m. and did forceful sex with her. On 05.06.2022, the applicant took the minor victim away and started living in a rented room like husband and wife. During that time, the applicant did sex with her for many times. The father of the victim had lodged a report suspecting the applicant.

3. The learned counsel for the applicant has vehemently argued that the victim went with the applicant voluntarily. She had love affair with the applicant. She did not lodge a report at the first time when the applicant has committed sex with her as alleged. The victim was attained the age of understanding, the nature and the consequences of her acts. She was forced to make an incorrect statement against the applicant. The victim never resisted the applicant to have sex with her. Hence, it cannot be said that it was forceful sex. He relied on the orders passed by this Court, in the case of (i) *Faizan Wahid Baig Versus The State of Maharashtra, Bail Application No. 3772 of 2021, dated 15.11.2022* and (ii) *Rohit Sukumar Sukate Versus The State of Maharashtra and another, Criminal Bail Application No.127 of 2022, dated 06.04.2022*.

4. Relying on the above cases, he would vehemently argue that the Court has taken a view that the victim though minor, was capable of understanding the consequences of her acts and voluntarily accompanied the applicant to her aunt's place. Though, she was a minor and her consent was immaterial, in a case like this, where she voluntarily joined the company of the applicant, and categorically admitted she was in love with the applicant, whether she consented for the sexual intercourse or not, is the matter of evidence. In the case of *Rohit Sukumar Sukate* (*supra*), it was observed that there were no elements of force or coercion at the instance of applicant/accused in having physical relations with the victim. Hence, bail was granted.

5. The learned A.P.P. and the learned counsel for the victim would argue that, the applicant was 25 years old and the victim was only 15 years old. She was not matured to understand the consequences of her acts. The victim has specifically alleged that the applicant did multiple forceful sex with her and was taking her away from her house at odd hours. The possibility of pressuring her cannot be ruled out. The offence is serious. At the time of first sex, she was between 13 to 14 years. Her consent is immaterial. The case laws relied on by the learned counsel for the applicant cannot be applied in the case in hand as its facts are different.

6. As discussed above, the victim has specifically alleged

against the applicant that he was calling her at odd hours and doing forceful sex with her. After having gone through the papers placed on record, it appears that time and again applicant was forcing her to come and she was following him. The applicant had also told her that he would marry her, but could not as she was minor. There are allegations of forceful sex and resistance too.

7. The Honourable Apex Court, in the case of *Ms. X. (Minor) Versus The State of Jharkhand and others, 2022 LiveLaw (SC) 194*, has observed that “the appellant victim was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established”.

8. In the above case, the ground raised by the applicant that she eloped voluntarily with the applicant and had a love affair have been held not a good ground for bail.

9. Admittedly, the victim was below eighteen years. Hence, her consent is immaterial. Whether she was capable to understand the consequences of her acts, is a matter of appreciation of evidence on merit.

10. Considering the gravity of the offence, the age difference between the applicant and the victim and direct allegations of forceful sex, the applicant does not deserve bail. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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