

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

29 BAIL APPLICATION NO.1736 OF 2022

CHANDRASHEKHAR DNYANESHWAR SONKAMBLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr.P.N. Kalani, advocate for applicant.
Mr.S.B. Narwade, APP for the respondent/State.
Mr.S.P. Salgar, advocate for respondent no.2.

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CORAM : S.G. MEHARE, J.
DATE : DECEMBER 12, 2022

PER COURT :-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim at length.

2. At the time of the incident, the victim was 15 years and 11 months old. The applicant has a case that her parents were not ready to marry them, hence the victim voluntarily eloped with him. They had love affairs. During her stay with him, she never resisted the applicant nor attempted to flee away. The statements of the victim under sections 161 and 164 of the Code of Criminal Procedure, 1973 are contradictory. The victim has not been recovered from the custody of the applicant. The victim narrated the incident to the Medical Officer that she, at her own, went with the applicant and they had consensual sex. The victim is in advanced age knowing well the consequences of her acts she

committed. The applicant is a young boy of 20 years old. There is great possibility of pressurizing the victim to state against the applicant. The material investigation is over. He would rely on the orders of this Court dated 15th November, 2022 passed in Bail Application no.3372 of 2021 and Bail Application No.1093 of 2022 dated 21st September, 2022. Relying on these orders, he has vehemently argued that consensus of girl though below the age of 16 years is immaterial in the cases like this, for the reason that it is matter of evidence. On the above grounds, he claims the bail.

3. Learned APP for the respondent/State and learned counsel for the victim would submit that the prosecution has evidence of driver of the vehicle, who dropped them at railway station at Beed. The statement of the victim is sufficient to believe that, the applicant took him to the house of his maternal aunt. They stayed with her. Then they started living in a field. The victim has categorically alleged that the applicant was doing forcible sex with her. The maternal aunt was in contact with the parents of the applicant. However, in one fine morning his maternal aunt received a message, so the applicant left her at the bus stand of Palam. Then she immediately went to the Police Station. The case laws relied upon by the applicant are not applicable as those are on the different

facts. The offence is apparently serious. The victim was below 18 years at the time of the incident, hence her consent was immaterial. There are allegations of repeated forcible sex with her. Therefore, the applicant may be convicted for not less than 10 years, but may extend the imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine. Considering the gravity of the offence and possibility of tampering with the prosecution witnesses, the applicant has no case for bail.

4. The statement of victim is consistent about the repeated forcible sex done by the applicant. She was below 16 years age. They live together for sufficient period. Her statement further reveals that the applicant under the promise to marry took her from the custody of her parents.

5. The facts of the case of **Faizan Wahid Baig** (Bail Application No.3372/2021) were that it was a solitary incident. The Court doubted the allegations of consent. In the case of **Vaibhav Babarao Kadam** (Bail Application no.1093/202), the F.I.R. was lodged after 19 days of the alleged incident. Medical evidence was not supporting. On these facts, this Court granted bail to the accused. The facts of this case are distinct, hence those orders are distinguishable on facts.

6. Clause Sixthly of section 375 of the Indian Penal Code provides that when the victim/prosecutrix is under 18 years of age, sex with or without her consent is punishable offence. Learned APP has rightly pointed out that committing the repeated rape on a woman where she is 16 years of age is punishable with severe rigorous imprisonment for a term not less than 10 years, which may extend to life, which shall mean imprisonment for the remainder of that person's natural life.

7. Considering the age of the victim and forcible sex done with her, the Court is of the view that her consent is immaterial. The Medical evidence also support the prosecution. Soon after leaving the victim on bus stand her statement came to be recorded. She narrated the similar statement before the learned Magistrate also. Prima Facie, the offence is serious. Material collected against the applicant prima facie supports the allegations. For these reasons, the application stands rejected.

8. Needless to state, observations in this order are restricted to this Bail Application only.

(S.G. MEHARE, J.)