

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2958 OF 2021

Jagdish @ Kadar Bharat Daware ..Applicant

V/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Anand Patil for the Applicant.

Mr. Y.Y.Dabke, APP for the Respondent/State.

Ms. Meghna Gowalani, appointed Advocate for Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 3 FEBRUARY 2022
(Through Video Conferencing)

P.C.

1. By this application, the applicant-accused No. 1 is seeking bail in Crime no 347/2020 registered with Police Station Karkamb, District Solapur under section 363, 366-A, 354, 376(3) read with Section 34 of Indian Penal Code (IPC) and Section 4 6 8 12 and 17 of the The Protection of Children from Sexual Offences ('POCSO Act' for short)

2. The victim then aged about 16 years was residing with her mother, brother and maternal uncle at Patwardhan

Kuroli, Taluka Pandharpur, District Solapur at the maternal place of her mother. On 18 October 2020 at about 4 am, she had eloped with the applicant as there was a love affair between them. They had gone to Pune and on road to Pune, they had garlanded each other in a temple in token of having married. They had stayed at Hadapsar in a rented room arranged with the help of co-accused Sanjay Kaware. It is the material prosecution case that the applicant had sexual intercourse with the victim on five to six occasion including on 8 November 2020.

3. Heard learned counsel for the parties. Perused Record.

4. In her statement under Section 164 of CrPC the victim claims that her date of Birth was 1 January 2005. In her School Leaving Certificate from Patwardhan Kuroli Prashala is shown to be 1 December 2004. Thus, she was 15 to sixteen years of age on the date of the incident. From her statement it can prima facie be seen that she had voluntarily accompanied the applicant, as according to her, there was a love affair between her and the applicant. She stayed with the applicant at Hadapsar Pune. She also claims that they had married each other by garlanding in a temple.

5. The learned APP assisted by the learned counsel for the respondent No.2 complainant strenuously urged that the victim had not attained the age of consent and was a child within the meaning of the POCSO Act. It is, therefore, submitted that the aspect of consent is immaterial.

6. It is true that the victim being less than 18 years of age was a child on the date of the incident. However looking to her age and the conduct, it can be said that she was aware of the nature and the consequences of her act. At least prima facie there is no element of compulsion or coercion which can be attributed to the applicant. There is no allegation of use of force or violence. Insofar as the offence under section 363 and 366-A of IPC is concerned, reliance can be placed on the decision of the Supreme Court in *S. Vardarajan v/s. State of Madras*¹. The investigation in this case is complete and charge sheet is filed. Although no parity is claimed it is necessary to note that the co-accused who have helped the applicant and the victim are released on bail/anticipatory bail. The applicant is in custody since 9 November 2020. I find that the applicant can be released on bail on conditions.

7. Hence the following Order :

1 AIR 1965 Supreme Court 942

ORDER

i) The Applicant be released on bail on executing a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

ii) The Applicant shall undertake to remain present before the learned Special Judge, during the course of the trial.

iii) The Applicant shall not tamper with the prosecution evidence/witnesses.

iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.

v) Bail bonds to be furnished before the learned Special Judge.

vi) The observations herein are of a prima facie nature, and the learned Special Judge shall not be influenced by the same at the trial.

8. The Criminal Application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)