

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3906 OF 2018

Mayuri Jatin Gurav ...Petitioner
Versus
Ishan Gajanan Bhosale And Anr. ...Respondents

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Mr. Purushottam Chavan i/by Mr. Vijay Killedar, Advocate for the Petitioner.

Mr. Sanjeev Kadam i/by Mr. Prashant P. Raul Advocate for Respondent No.1.

Mr. A. D. Kamkhedkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 17th AUGUST, 2022.

PER COURT:

1. The petitioner is original informant in C.R. No.23 of 2016 registered with Wai Police Station, Dist. Satara registered on 9th February, 2016 for offences punishable under Sections 376, 354-D, 325, 504 & 506 Indian Penal Code (for short “IPC”).

2. The petitioner has challenged the order dated 28th September, 2016 passed by the Juvenile Justice Board, Satara, below Exhibit – 12 in Juvenile Case No.93 of 2016 and order dated 18th July, 2018 passed by the Sessions Court in Criminal Revision Application No. 17 of 2017 preferred by the petitioner challenging

the order dated 28th September, 2016.

3. FIR was registered by petitioner on 9th February, 2016 alleging that in January, 2015, the respondent accused approached her and expressed love for petitioner and also told her that he is willing to marry her. In March, 2015 the accused again approached her and repeated his previous version. In April, 2015, the accused met petitioner. She sat in vehicle brought by him. She was assaulted. She was dropped home. From second week of April – 2015 to June – 2015, the accused had forcible physical relationship with complainant. On 26th November, 2015 accused performed marriage with her. She was pregnant. FIR was lodged.

4. Learned Advocate for the petitioner submitted that the impugned orders are contrary to law. Although the offence was of serious nature, the respondent No.1 was in custody for a single day. The Juvenile Justice Board has erroneously granted bail to respondent No.1 on the ground that he was juvenile. There was no evidence that he was juvenile at the time of incident. The Court was required to conduct inquiry to ascertain the age of the accused. The matter ought to have relegated to the regular Court to try the accused for the alleged offences. Since, both the orders are illegal and bad in law, the bail granted to respondent No.1 may be

cancelled. It is also submitted that the statements of the victim recorded under Sections 161 & 164 of Cr.P.C. ought to have taken into consideration while considering grant of bail, which is not done. The offence was committed after attaining majority. The petitioner had filed application at Exhibit – 12 on 10th June, 2016 and contended that offence was committed after attaining age of majority.

5. Mr. Kadam, the learned Advocate for respondent No.1 on instructions submits that the trial has proceeded and the prosecution has so far examined eight witnesses. The evidence of the petitioner is not recorded since the adjournments were sought at the instance of the petitioner on the ground that the present application is pending before this Court. The order dated 18th July, 2018 passed by the Sessions Court, as well as the order dated 28th September, 2016 passed by the Juvenile Justice Board clearly indicate that the respondent No.1 was juvenile at the time of incident and considering the factual aspects bail was granted to him.

6. I have perused the documents on record. Vide order dated 28th September, 2016 it was observed that, the CCL is charge-sheeted mainly for the offence under Section 376 of IPC alleged to

be committed in the month of October – 2015. In view of First Information Report registered, it appears that the CCL alleged to be forcefully married with the complainant knowing that it is her second marriage dated 9th February, 2016. CCL cannot be considered as major accused for this offence. In view of birth certificate filed on record, CCL had completed age of 18 years on 15th November, 2015. The offences mentioned except marriage are likely to be committed when CCL was below age of 18 years. There is no allegations regarding breach of any condition by CCL imposed at the time of granting bail to him. Vide order dated 18th July, 2018, the Court has passed detailed order after hearing both sides and opined that considering the legal position and the facts of the case, the Court did not find any illegality in the order passed by the Juvenile Justice Board below application at Exh.12. The Court also recorded that, Juvenile Justice Board has taken into consideration entire material on record and after its critical analysis, it has reached the proper conclusion that so far as incidents mentioned in the FIR regarding commission of offences punishable under Sections 376, 354-D, 325, 504 & 506 of Indian Penal Code are concerned, those were committed during the period of April – 2015 up-to September, 2015. Learned Advocate for the petitioner also submitted that, in the statement under Section 164

of Cr.P.C. the victim had stated that the incident of sexual assault had occurred even after the completion of 18 years age.

7. In the light of factual aspects of the matter, findings of the Courts below and the fact that the case is proceeded and the prosecution has so far examined eight witnesses, no ground is made out for setting aside impugned orders. Hence, petition stands rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)