

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

VAISHALI
ANIL
TIKAM

CRIMINAL BAIL APPLICATION No. 1571 OF 2021

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Ajay Kumar Ramlal Yadav**...Applicant****Vs.****The State of Maharashtra****...Respondent**

* * * *

Mr. Ashok M. Saraogi for Applicant

Smt. P.N. Dabholkar, APP for State/Respondent No.1

API- Dattatray Yadav, Kalwa Police Station- Thane present

Coram : Sandeep K. Shinde, J.

Dated: 6TH MAY, 2022.

P.C. :

1. Heard Mr. Saraogi, learned counsel for the Applicant and Ms. Dabholkar, learned APP for the State.

2. This is a second bail application. First bail application was rejected on 17th February, 2020 on the ground that although the evidence suggests that victim voluntarily accompanied the applicant and stayed with him at different places, yet, being a minor, her consent was immaterial. In

the backdrop of this fact, the Learned Judge was requested to expedite the trial in Special Case (POCSO)No. 203/2018.

3. Mr. Saraogi, learned counsel for the Applicant, on instructions, submits that till date, the prosecution has not examined prosecution witnesses.

4. Be that as it may, it is the prosecution case that, on 20th April, 2018, the victim's father had filed complaint, whereupon, an offence under Section 363 of IPC came to be registered against unknown person. It appears from the investigation that, victim had voluntarily left her home with her colleague one Ms. Ratan Prajapati. The victim and Ratan Prajapati left the home on 19th April, 2018; hired a room at Village Rabale and stayed over there for four days. Ms. Ratan Prajapati had love affair with Shyam Yadav @ Baccha. For all that Ms. Ratna and her paramour, were arrested on 20th May, 2018 for kidnapping victim. Be that as it may, at the material time when victim left her parents' house, the applicant, with whom she had love affair, was at native place. Later, applicant met the victim on 16th May,

2018 while she was living with her friend Ms. Ratan Prajapati. Thereafter, both left to Bhusawal and thereafter, to Ahmedabad and Surat. Victim accompanied the Applicant voluntarily and stayed with him for some days. During her stay, she voluntarily responded to physical desire with the Applicant. On 24th May, 2018, the applicant was arrested. Thereafter, the victim was sent for medical examination. Victim told Medical Officer that she was in love with the Applicant and both were eager to marry. However, victim's parents, did not approve her relations with applicant. She told to medical officer, since parents refused her to marry the Applicant, they decided to run away from the home.

5. In consideration of the facts stated above, prima facie, it cannot be said that applicant forced her to accompany him with intention to commit sexual assault on her. Primary evaluation of facts of the case, in my view the victim possessed the mental capacity to actively understand

the nature circumstances and consequences of the act to which she had consented.

6. The Applicant is in custody since 24th May, 2018, Although the charge has been framed, the trial may not conclude in near future. Thus, in consideration of the facts of the case, in my view, case is made to release the applicant on bail. Hence the following order:-

ORDER

- (i) The Applicant arrested in Special Case (POCSO) No. 203/2018 registered with Kalwa Police Station, Thane, shall be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand only), with one or more sureties in the like sum.
- (ii) The Applicant shall report to the Investigating Officer, once in a month, i.e. 2nd Monday of each month between 11.00 a.m. to 1.00 p.m. commencing from May 22 for six months.

(iii) The Applicant shall furnish his permanent residential address and contact number to the Investigating Officer within a week from his release from the jail.

(iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The application is accordingly allowed and disposed of.

8. It is made clear that, observations made hereinabove, shall be construed as expression of opinion, for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

(Sandeep K. Shinde, J.)