

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

CRIMINAL BAIL APPLICATION NO.127 OF 2022

Rohit Sukumar Sukate

...Applicant

Vs.

The State of Maharashtra & Anr.

... Respondents

Mr. Paras Yadav i/b. Mr. Prasad Kulkarni, for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent-State.

Ms. Vrushali Maindad, for the Respondent No.2 (Appointed through Legal Aid).

**CORAM : C.V. BHADANG, J.
DATE : 6 APRIL 2022**

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. By this Application, the Applicant – Accused is seeking release on bail in Crime No.240/2019 of Police Station Laxmipuri, District Kolhapur, under Section 376, 323 and 506 of IPC and Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The aforesaid crime is registered on the basis of the complaint dated 9 September 2019 lodged by the father of the

victim – girl. The victim at the relevant time was 16 years and 6 months of age, her date of birth being 17 November 2002. The Applicant was a brother of the friend of the victim and thus, was acquainted with her. She claims that on 19 May 2019 the Applicant called her behind her house. The victim accordingly went and met the Applicant where the Applicant is alleged to have forcible sexual intercourse with her, saying that he loves her and wants to marry her. Thereafter, there were multiple occasions when the Applicant is alleged to have sexual relations with the victim girl. Eventually, the matter came to the knowledge of the informant somewhere in the first week of September 2019, after which the complaint came to be lodged.

3. In this case, after investigation, chargesheet is filed. The Applicant was arrested on 9 September 2019 and is in custody since then.

4. I have heard the learned counsel for the parties. Perused record.

5. It is submitted by the learned counsel for the Applicant that the victim although a minor, had attained the age of understanding the nature and the consequences of the act. It is submitted that the statement of the victim and the medical history given shows that the relationship was consensual in

nature, which is also apparent from the medical report. He submitted that there is delay in lodging of the complaint and further incarceration of the Applicant is not necessary.

6. Learned APP assisted by the learned counsel for the Respondent – Complainant submitted that the victim was a 'child' within the meaning of said Act and therefore, her consent is immaterial. It is submitted that the Applicant has taken disadvantage of the acquaintance and has sexually abused the victim which aspect is supported by the medical evidence.

7. I have considered the circumstances and the submissions made.

8. There is no manner of doubt that the victim being below the age of 18 years, is a 'child' within the meaning of the said Act. However, at the same time, it is necessary to note that the victim had attained the age of 16 years and 6 months and ought to be aware of the nature and the consequences of the act. There are circumstances to indicate that there was no element of force or coercion at the instance of the Applicant in having physical relations with the victim. It is significant to note that the medical report vide Clause 15(F) shows that the Applicant had even used protection (condom) during the relationship. The investigation is complete and the chargesheet is filed. The Applicant is in

custody for about two years and six months. I do not find that detention of the Applicant behind bars is warranted pending trial.

9. In the result, the following order is passed.

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant Rohit Sukumar Sukate, be released on bail in Crime No.240/2019 of Police Station Laxmipuri, District Kolhapur, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.
- (iii) The Applicant shall undertake to remain present before the learned Special Judge during the course of trial, unless exempted.
- (iv) The Applicant shall not directly or indirectly make any attempt to contact the informant / victim or any other prosecution witnesses and shall not otherwise tamper with the prosecution evidence.
- (v) It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(v) In the event of breach of any of the condition, the bail is liable to be cancelled.

C.V. BHADANG, J.