

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

**INTERIM APPLICATION NO.1637 OF 2022
IN
CRIMINAL APPEAL NO.557 OF 2022**

Dilip Ramchandra Gurdhalkar Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. Dinesh Adsule a/w Vijaykumar B. Dhakane, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent No.1.
- Mr. Ramakant D. Patil, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 06th DECEMBER, 2022**

P.C. :

1. Heard Mr. Dinesh Adsule, learned counsel for the Applicant, Mr. Ramakant D. Patil, learned counsel for Respondent No.2 and Smt. M. R. Tidke, learned APP for the State.

2. This is an application for bail pending the Appeal filed by the Applicant challenging the Judgment and Order dated

04/05/2022 passed by the Special Judge, Pune, in Special (Child Protection) Case No.468/2017. The Applicant was convicted for commission of offence punishable u/s 363, 366-A, 376(2)(i) of the Indian Penal Code and u/s 4 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3. The prosecution case is that the victim i.e. P.W.2 was missing from her house from 05/05/2017. Therefore her family lodged FIR about her missing. According to the mother of the victim, her date of birth was 30/01/2002. Therefore she was about 15 years and 4 months at the time of incident. Suspicion was expressed against the Applicant, who was her neighbour and he was also missing since that day. Both of them were found on 02/08/2017. The Applicant faced trial for various offences for which was ultimately convicted.

4. Learned counsel for Applicant submitted that it was a clear case of love affair and consent. The date of birth of the victim is seriously disputed. The prosecution has not proved that

she was below 18 years of age. Therefore none of the offences is made out against the Applicant. He submitted that the Applicant was on bail during trial and he has not misused that liberty.

5. Learned counsel for Respondent No.2 as well as learned APP opposed this application on merits. They submitted that the date of birth of the victim is clearly established through the birth certificate and therefore there is no scope to argue that she was not a minor below 18 years of age at the time of offence. Therefore consent would be immaterial.

6. I have considered these submissions. The evidence of P.W.2 – victim is on record. She has deposed that her date of birth was 30/01/2002. She used to reside with her parents, grandparents, uncle and brother. She was knowing the Applicant. He used to reside opposite their house. She got acquainted with him prior to 1 ½ years. He had given her a mobile phone and they used to talk through that phone. On 05/05/2017 her father noticed that she was talking on that

mobile phone. He noticed that she was talking with the Applicant. The father got angry. He scolded and beat her and then drove her out of the house. The victim P.W.2 then herself called the Applicant and informed him about the incident. He came to the place where she was standing. Then they went to another place. He told victim that they would perform marriage. He took her to another place on his two wheeler. The victim has stated that because she was angry with her father, she was ready to go with the Applicant. Both of them then went to Hadapsar in a Rikshaw. Then they went to Hyderabad. Then they came to Parbhani. They stayed there for 1 ½ months in a rented room. P.W.2 insisted for marriage. It is her case that the Applicant established physical relations with her against her wish. He used to go for attending his job. Then they came to Kingaon and stayed there in a rented room. They performed marriage in a temple. His business was not going on well. The victim wanted to return back to her house. But the Applicant told her that since they were married, he would not allow her to return home. Once they were going to Aurangabad, police came there and

met them in the bus. They took both of them in custody and brought them to Mundhwa police station.

7. This narration of the incidents given by the victim herself shows that it was a clear case of love affair and consensual affair though she has stated that she was not willing for the sexual intercourse. It is clear from her evidence that they had gone to various places and therefore there is considerable force in the submissions that it was a consensual relationship.

8. However, the question still remains as to whether she was below 18 years of age, making the consent immaterial. For that purpose the prosecution has relied on the evidence of the P.W.1-mother. She had produced the birth certificate before the police. It is taken on record at Ex.21 in the trial. However, the evidence of the Investigating Officer P.W.5 PSI Pratap Giri throws some doubt about authenticity of this birth certificate. In his cross-examination he has admitted that he had not recorded statement of any concerned witness who had produced the birth

certificate of the victim. He did not issue any communication to verify the authenticity of the birth certificate.

9. These admissions raise some reasonable doubt about the authenticity of the birth certificate. Moreover only one letter addressed by the Investigating Officer to the school authorities is produced at Ex.39. There is no further reference to any bonafide certificate from the school showing her date of birth.
10. Considering this background, some reasonable doubt is created about the age of the victim and there is force in submissions that the prosecution has not conclusively proved that the victim was below 18 years of age.
11. All these issues will have to be decided during the final hearing stage. Today I am only considering grant or refusal of the bail to the Applicant. The Applicant was on bail during trial. He has not misused the same. The victim PW.2 herself had asked the Applicant to take her away. This was clear case of consent.

Considering all these issues, bail can be granted to the Applicant pending final disposal of the Appeal.

12. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.557 of 2022, the Applicant is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.
- (ii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)