

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

CRIMINAL BAIL APPLICATION NO. 2260 OF 2021

Imran alias Immu Asif Shaikh Applicant
Versus
The State of Maharashtra & Anr. Respondents

—————

Mr. Amol P. Mhatre for Applicant.
Ms. Rutuja Ambekar, APP for State/Respondent No.1.

—————

CORAM : SARANG V. KOTWAL, J.
DATE : 19th JANUARY, 2022
(through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.271 of 2020 registered at Mumbra police station, on 07/03/2020, under section 376(3) of the Indian Penal Code (for short 'IPC') and under sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. At the outset, it must be noted that the first informant who is mother of the victim was added as a party respondent and notice was issued to her. The investigating officer was also directed to inform the first informant about pendency of this application.

Learned counsel for the applicant has filed an affidavit of service. The Investigating officer also makes a statement that the informant is informed about the pendency of this application. However, nobody appears for the first informant. Therefore, I am proceeding to decide this application.

3. Heard Shri. Amol Mhatre, learned counsel for the applicant and Ms. Rutuja Ambekar, learned APP for the State.

4. The First Information Report (for short 'F.I.R.') is lodged by the first informant who is mother of the victim. She has lodged this F.I.R. on 07/03/2020. She has stated that, in the month of March 2020 she came to know from her acquaintance that her daughter who was 14 years of age had become pregnant. She made inquiry with her daughter. At that time, her daughter told her that the applicant had called her to his another room in September 2019 at around 2.00a.m. to 2.30a.m. and there they had their physical relations and because of that she had become pregnant. The victim and the applicant had visited the doctor for abortion. The applicant had taken Rs.50,000/- from the victim, which was kept in the informant's house. On 25/02/2020, the

applicant told the victim that they should inform their family, but the victim's mother decided to lodge F.I.R. against the applicant. Accordingly, the F.I.R. is lodged.

5. Learned counsel for the applicant submitted that the applicant's date of birth is 17/10/2001. Said fact is reflected in his school leaving certificate which is annexed to the compilation of documents tendered by the applicant. His Aadhar card also mentions the same date of birth. He submitted that, therefore, the applicant being below 18 years of age on the date of incident, he cannot be kept in jail and he has to be granted bail. He further submitted that, in any case, it was a case of love affair. The applicant himself was a very young boy and, therefore, leniency should be shown to him.

6. Learned APP opposed this application. She relied on the victim's statement which is recorded on 08/03/2020, as well as, her supplementary statement which is recorded on 23/08/2021. She submitted that the incident was repeated on 18/10/2019 and on that day the applicant was above 18 years of age. Therefore, the offence is made out. She also submitted that

the ossification test report showed that applicant is, in fact, 22 years of age.

7. I have considered these submissions. Narration of the victim's version in her statement dated 08/03/2020 shows that, they had their first physical relation in September 2019 at about 2.30a.m. This was during odd hours and the victim had willingly gone to a secluded room with the applicant. Therefore, there appears to be element of consensual physical relations. Ofcourse, as the victim is below 18 years of age, the consent would not matter. Today I am considering whether the applicant should be granted bail or not. The applicant himself was below 18 years of age in September 2019 which is reflected from the school record, as well as, Aadhar card. Though the Ossification test indicates otherwise, at this stage, the applicant does have some documents in his favour to show that he was below 18 years of age at the time of incident. According to the supplementary statement of the victim which was recorded on 23/08/2021 i.e. after one and half years, for the first time, she had mentioned that the applicant had committed that act on few occasions after 18/10/2019, as well.

However, this version is coming much belatedly as an afterthought. Therefore, fact remains that there is sufficient substance in the submission of learned counsel for the applicant that, on the date of incident the applicant was below 18 years of age.

8. As far as, other question of taking Rs.50,000/- is concerned, the supplementary statement itself shows that, that amount was to be used to carrying out abortion. Though, this act cannot be justified; both, the victim, as well as, the applicant were of tender age, therefore, in this situation, their acts will have to be considered leniently on humanitarian grounds. Considering the tender age of the applicant and background of the case, further custody of the applicant during entire period of trial is not necessary. The trial will take its own course in accordance with the law. The observations are made only for the purpose of consideration of grant of bail to the present applicant. The trial court shall not be influenced by any of these observations during the trial. Taking into account the above discussion, the applicant can be granted bail pending the trial.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No.271 of 2020 registered at Mumbra police station, 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 local sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)