

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2689 OF 2021

Rahul Kalika Chuhan

..Applicant

Vs.

The State of Maharashtra & Ors.

..Respondents

Ms. Shubhangi Parulekar, for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent / State.

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CORAM : C.V. BHADANG, J.
DATE : 3 FEBRUARY 2022
(Through Video Conferencing)

P.C.

. The Applicant has been chargesheeted for the offence punishable under Section 363, 366(A), 376, 376(3)(n) of IPC and Section 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'), arising out of Crime No.1410/2020 of Police Station Hadapsar, Pune.

2. The aforesaid crime was registered on the basis of the complaint lodged by the mother of the victim when the victim went missing from the house on 10 September 2020, at about 5.00 p.m. The statement of the victim would show that she had accompanied

the present Applicant to Theur, District Pune where she claimed that she and the Applicant had garlanded each other in token of marriage and thereafter, they were staying in Theur in a rented room where the Applicant had sexual relations with her on multiple occasions. Subsequently, the Applicant came to be arrested on 6 November 2020 after which, the victim has returned to her parents. There is a bonafide certificate dated 1 November 2018 of the school where the victim was taking education which shows her date of birth as 18 November 2006 that is also the date given by her in the statement under Section 164 of Cr.P.C. Thus, on the date of incident, the victim was aged about 13 years and 9 months.

3. I have heard the learned counsel for the Applicant and the learned APP. Perused record.

4. The learned counsel for the Applicant has strenuously urged that the victim had voluntarily accompanied the Applicant and the sexual relations are consensual in nature.

5. Learned APP submitted that looking to the age of the victim, consent is immaterial and admittedly, the Applicant had taken the victim to Theur where they had exchanged garlands after which they had sexual relations.

6. I have considered the submissions made. At least, *prima facie*, it appears that the victim was only 13 years and 9 months of age and the medical report also supports the version of the victim that there were sexual relations. In such circumstances, I do not find that the discretion can be exercised in favour of the Applicant at this stage. However, looking to the fact that Applicant is said to be 21 years of age and is in custody since 6 November 2020 and further having regard to the fact that there is no element of any force or violence shown, the trial is expedited.

7. The present Criminal Application is disposed of, with liberty to the Applicant to renew the request after six months or examination of the victim before the Special Court, whichever is earlier.

C.V. BHADANG, J.