

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1625 OF 2020

KRISHNA SUNIL SHINDE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Mahendra Sandhyanshiv, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Ms.Shilpa Gajane, Advocate for the Respondent No.2.

CORAM : V. G. BISHT, J.

**RESERVED ON : 21st DECEMBER 2021
PRONOUNCED ON : 3rd JANUARY 2022**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.270 of 2020 registered with Police Station Nandgaon, Nashik, for offences punishable under Section 376(3) of the Indian Penal Code (IPC). and under Sections 3 and 4 of the

AVK

1/7

Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 Informant is mother of victim, who, at the relevant time, was a student of 9th Standard. Victim's date of birth is 26th April 2005 whereas applicant's date of birth is 3rd February 2002.

3 According to prosecution on 28th May 2020 the victim's parents had been to market while the victim was alone in the house. The parents had left their mobile with the victim. At about 1.50 p.m. the victim rang up her mother's maternal uncle and she was crying. After the parents received the message they rushed home. They found the victim and informant's father-in-law, namely, Sampat Bala Shinde sitting in the verandah of the house. On being enquired, the victim told that at about 1.00 p.m., applicant, who is a relative, came and forcibly committed sexual intercourse. When she raised commotion, Sampat Bala Shinde i.e. father-in-law of informant, came and found applicant hiding himself in a quilt. Later on,

applicant fled away. Informant-mother, accordingly, lodged the First Information Report (FIR).

4 Mr.Mahendra Sandhyanshiv, learned counsel for the applicant, submits that there was love affair between applicant and victim. The learned counsel also invited my attention to statement of victim and pointed out the inconsistencies appearing in between her statement, contents of the FIR and statement of Sampat Bala Shinde. According to learned counsel, having regard to the facts and circumstances of the case and the fact that at the relevant time the applicant was only 19 years old, the application deserves to be considered favourably. Moreover, investigation is over and charge-sheet has been filed. Having regard to the age of the applicant, it is not desirable that he be allowed to remain behind the bars.

5 Mr.H.J.Dedhia, learned APP, on the other hand, opposed the submissions by contending that the victim was minor at the relevant time, and therefore, no leniency should be

shown. Similarly, learned counsel for the respondent no.2-informant, submitted that there is specific statement of victim and as also of her grandfather showing the complicity of the applicant in the crime. Moreover, the victim was minor. There is no merit in the application and the same is liable to be rejected.

6 Perused the investigation papers. Apparently, having regard to the date of birth of applicant and victim, it is clear that applicant was 19 years old whereas the victim was 15 years old. As far as the submission of learned counsel for applicant that there was love affair between the applicant and the victim is concerned, and the effect thereof, the same can be pondered over at the time of trial. However, allegations in the FIR make it prima facie clear that the victim was sexually assaulted. In this regard, it is also necessary to go through the statement of victim and her grandfather.

7 There are certain contradictions. The FIR shows that when the victim raised commotion, her grandfather came and

then confronted the applicant whereas victim's statement does not show so.

8 On the other hand, statement of grandfather, namely, Sampat Bala Shinde, shows something different. His statement shows that at about 1.00 p.m. / 1.15 p.m., he heard cries of victim and therefore went near the room. The victim opened the door and informed that the applicant had forcibly committed sexual intercourse with her. However, he found the applicant had run away. The statement of grandfather does not show as is the FIR and as also the statement of victim, that the grandfather had confronted the applicant on the spot itself. Similarly, although this witness states that after hearing the cries of victim, he went near the room of latter but the statement of victim nowhere shows that on cries being raised by her, the grandfather came and then she narrated the incident.

9 Having regard to the above serious discrepancies, the possibility of affair between the applicant and victim cannot be

ruled out. At the same time, there cannot be any justification that there was sexual relationship, the victim being a minor.

10 Above all, the age factor of both applicant and victim matters. The applicant was only 19 years and even now he is in his early twenties, and in such circumstances it is not desirable, particularly when the investigation is over and charge-sheet has been filed, to allow him to languish in jail. The trial may take its own time. No other criminal antecedents are forthcoming.

11 For the aforesaid reasons, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Krishna Sunil Shinde shall be released on bail in Crime No.270 of 2020 registered with Police Station Nandgaon, Nashik, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.

- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)