

BAIL APPLICATION NO.2616 OF 2021

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Mr.Shailesh Chavan, Advocate for the Respondent No.2.

CORAM : V. G. BISHT, J.

RESERVED ON : 15th DECEMBER 2021
PRONOUNCED ON : 20th 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.542 of 2020 registered with Police Station Shikrapur,
for offences punishable under Section 363, 366, 376, 120(B),

AVK

195(A), 212 read with 34 of the Indian Penal Code (IPC).and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 The applicant is cousin maternal uncle of informant (victim). For the first time on 17th April 2019 the applicant told the victim that he loves her. However, the victim refused to acknowledge on the ground of they being related as maternal uncle and niece. Despite that, the applicant used to visit her school and take her for outings.

3 On 1st January 2020 the applicant told the informant that they would go to see a movie in Phoenix Mall. However, he took her to a lodge and maintained physical relation. From then onwards, the applicant used to take the informant to various places and exploited her sexually. Ultimately, the informant lodged the First Information Report (FIR).

4 Mr.Abhishek Avachat, learned counsel for the applicant, submits that there is an inordinate and unexplained delay in lodging the FIR. Even if it is assumed that there were some relations between the applicant and the informant, the relations were consensual. The applicant is a married man and has a child. The informant had attained the age of understanding and in such circumstances, it cannot be said that the informant was sexually exploited. Investigation is over and charge-sheet has been filed. No purpose would be served by keeping the applicant behind the bars. Hence, the applicant deserves to be enlarged on bail, argued the learned counsel.

5 Smt.Anamika Malhotra, learned APP, on the other hand, opposed the submissions by contending that the informant was minor at the time of incident, and therefore, there cannot be any justification of consensual sexual relationship as claimed by the learned counsel for the applicant. The learned APP also invited my attention to statement of various prosecution

witnesses and submitted that the facts and circumstances of the case do not warrant the release of the applicant on bail.

6 Mr. Shailesh Chavan, learned counsel for the respondent no.2-informant, has supported the submissions of the learned APP and has also vehemently contended that the discretionary power should not be exercised in favour of the applicant.

7 Perused the investigation papers.

8 Two crucial factors which disturb the mind are thus – one, the applicant is none other than the maternal uncle of the informant, who, at the relevant time, was minor, and two, the applicant was 33 years old and married having one child. Despite above, he not only took advantage of the minority of the informant but also because of his proximity on account of his relationship with the informant, he exploited the latter sexually. There cannot be any justification of consensual sexual

relationship, having regard to the age of informant. Even if it was so, that will have to be seen at the time of the trial along with other attending circumstances.

9 Facts of the case do not warrant the exercise of discretion of bail in favour of the applicant. I am, therefore, not inclined to allow the application. Hence, the following order :

ORDER

- (i) Application is rejected.
- (ii) However, the trial is expedited.

(V. G. BISHT, J.)