

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2918 OF 2021**

Suraj Vyankat Suryavanshi ... Applicant
versus
The State of Maharashtra & Anr. ... Respondents

Mr. Kuldeep U. Nikam, for Applicant.
Mrs. J.S.Lohakare, APP, for State.
Mr. Madan J. Gupta, appointed Advocate for Respondent No.2.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 1st JULY, 2022
PRONOUNCED ON : 21st JULY, 2022**

P.C.

1. The Applicant, who is arraigned in C.R.No.593 of 2020 registered with Vimantal Police Station for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offence Act, 2012, has preferred this Application for bail.

2. The indictment against the Applicant runs as under :

The first informant – Respondent No.2 resides at Vadgaon Shinde Road, Lohagaon. His elder daughter was 14 years and 7 months of age and studying in 9th standard. On 27th October, 2020 at about 6.00 p.m. when the first informant and his wife returned to home, elder daughter (victim) was not at home. The first informant went in search of victim in the adjacent field. A boy informed him that victim was seen with the Applicant. The first informant asked his son to look for victim at the

house of the Applicant. While victim's brother was on his way to the house of the Applicant, he found victim on Vadagaon Shinde Road. When the victim was brought back home, she seemed terrified. She did not disclose anything. On 28th October, 2020, after being taken in confidence, victim opened up. Victim disclosed that she had known the Applicant since a year prior to the occurrence. On the previous day, while the first informant and his wife had gone to shopping, the Applicant came in front of her house and took her to the field of Mr. Kakade. The Applicant allegedly took her to an under construction site and had physical relations with her, without her consent. Hence, the first informant lodged a report on 9th November, 2020.

3. The Applicant came to be apprehended on 14th November, 2020. Post completion of investigation, charge sheet has been lodged.

4. I have heard Mr. Nikam, learned Advocate for the Applicant, Mrs. Lohakare, learned APP for the State and Mr. Madan J. Gupta, learned Counsel appointed to espouse the cause of the Respondent No.2.

5. Mr. Nikam, learned Advocate for the Applicant strenuously submitted that the alleged incident has its genesis in the affair between the Applicant and the victim. Mr. Nikam would urge that the case is one of the adolescent experimentation. The Applicant had barely completed 18 years of age on the date of the alleged occurrence. The victim, though below 15 years of age, has not stated that the Applicant had forcible physical relations with her. In the circumstances, the Applicant

deserves exercise of discretion. He placed reliance on the judgment of this Court in the case of Sunil Mahadev Patil V/s. The State of Maharashtra¹ wherein the considerations which ought to weigh with the Court in exercise of discretion in such cases, were enunciated.

6. As against this, the learned APP stoutly submitted that the Applicant cannot take refuge in the alleged consensual nature of the act. Since the prosecutrix had not completed even 15 years of age, the aspect of consent becomes wholly immaterial.

7. Mr. Gupta, learned Counsel for Respondent No.2 supplemented the submission of the learned APP and urged that in the light of the material on record where the statement of the victim is supported by her parents and medical evidence, the Applicant does not deserve exercise of discretion. Reliance was sought to be placed on the observations of the Supreme Court in the case of Aparna Bhat & Ors. V/ s. State of Madhya Pradesh and Anr.² to underscore the approach expected of the Court in sexual offences against women.

8. The fact that the Applicant was 18 years and two months old at the time of the alleged occurrence, persuaded me to give anxious consideration to the rival submissions and minutely examine the material on record especially the statements of the victim recorded before the police and the learned Magistrate under Section 164 of

1 2015 3 AIR Bom R (Cri) 594

2 2021 Cri. L.J. 2281

the Code, 1973.

9. To begin with, prima facie, the act to which the victim was allegedly subjected to is borne out by the material on record. It also appears incontrovertible that the victim was about 14 years and 7 months of age. In this backdrop, prima facie appreciation of the attendant circumstances, is warranted.

10. In her statement recorded under Section 164 of the Code before the Magistrate, the victim stated that she had known the Applicant since a year prior to the occurrence. They were in love. On 27th October, 2020 she met the Applicant in the field adjacent to her house. She was to return to her home within 5-10 minutes. However, she noticed her father searching for her. She and the Applicant, therefore, concealed their presence in the bushes. As the evening set in, she and the Applicant went to a construction site. The Applicant had physical relations with her thereat. Thereafter, the Applicant asked his brother to drop her at home. On the way, she met her brother and returned home.

11. Mr. Nikam, in the light of the aforesaid statement, would urge that the conduct of the Applicant in asking his brother to drop the victim at her house, shows that the Applicant cared for the victim. As the Applicant and the victim were in a relationship and the Applicant was also of tender age, prima facie, an inference of forcible physical relations cannot be drawn, urged Mr. Nikam.

12. Per contra, the learned APP and the learned Counsel for the Respondent

No.2 invited the attention of the Court to the history recorded by the medical officer as per the narration of the victim. The medical officer noted that the victim narrated that the Applicant had non consensual, forceful and unprotected intercourse.

13. At this juncture and in the light of the facts, I deem it superfluous to delve deep into the aspect of the forcible or consensual nature of the alleged act. Since the victim had not completed even 15 years of age, the question of consent becomes immaterial. What has to be considered is whether the victim possessed sufficient maturity of understanding to even know the nature and consequences of the act, she was indulging in. Can it be said, albeit prima facie, that the victim had voluntarily surrendered to the desire of the Applicant out of love and affection towards the Applicant. The attendant circumstances assume critical significance.

14. Prima facie, it appears that the Applicant and the victim concealed their presence after noticing the father of the victim. Mr. Sunny Abhange, a witness whose statement came to be recorded under Section 164 of the Code, states that he had seen the Applicant along with a girl in the bushes. Upon being enquired as to why he was there at such late hours, the Applicant simply replied that he would leave.

15. In the aforesaid circumstances, the fact that despite having known that the father of the victim was in search of the victim and they were seen by a witness, the Applicant took the victim to the construction site. The victim was allegedly scared as her father was looking for her. In such perturbed state of mind, a fourteen and half

year old girl, can hardly be imputed with the maturity of understanding to voluntarily surrender herself to the physical desire of the Applicant. If viewed through the prism of aforesaid circumstances, the act on the part of the Applicant, prima facie, appears to be an instance of overpowering of lust over love and care. The subsequent conduct of the Applicant in asking his brother to drop the victim at her home, strenuously pressed into service by Mr. Nikam, therefore, does not dilute the complicity of the act of the Applicant. I am persuaded to take the aforesaid view also for the reason that the facts do not prima facie present a situation where the Applicant and the victim were together for hours and days and it could be urged that one thing led to another. In the case at hand, on the contrary, there is material to indicate that the father of the victim was on her trail and another witness had admonished the Applicant. Yet, the Applicant had the audacity to deflower the victim.

16. For the foregoing reasons, I am not persuaded to exercise the discretion in favour of the Applicant.

17. However, the fact that the Applicant is 20 years of age and continued incarceration as an under trial prisoner would jeopardize his life and career are the matters which cannot be lost sight of. A direction for expeditious commencement and conclusion of the trial, thus, seems in order. If the trial is not concluded within a reasonable time, it may be expedient to allow the Applicant to revive the prayer for bail.

18. Hence, the following order :

ORDER

- (i) The Application stands rejected.
- (ii) The Special Judge who is seized of the matter arising out of C.R.No.593 of 2020 registered with Vimantal Police Station, Pune, is requested to commence the trial in the said case and conclude the same as expeditiously as possible and preferably on or before 31st May, 2023.
- (iii) The Applicant shall render necessary co-operation for the expeditious conclusion of the trial and shall not seek adjournments.
- (iv) In the event the trial is not completed by 31st May, 2013, the Applicant shall be at liberty to revive the prayer for bail.
- (v) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant.

(N.J.JAMADAR, J.)