

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

CRIMINAL BAIL APPLICATION NO. 1713 OF 2020

Jeyesh Anandrao Malgunde ..Applicant
Vs.
The State of Maharashtra & Anr. ..Respondents

Mr. Rahul K. Dhaygude, for the Applicant.
Mr. N. B. Patil, APP for the Respondent / State.
Mr. Sambhaji Kharatnol, for the Respondent No.2.

MAMTA
AMAR
KALE

Digitally signed
by MAMTA
AMAR KALE
Date:
2022.02.08
18:04:03
+0530

**CORAM : C.V. BHADANG, J.
DATE : 8 FEBRUARY 2022
(Through Video Conferencing)**

P.C.

. By this Application, the Applicant is seeking release on bail. The Applicant is chargesheeted in connection with investigation of Crime No.36/2020 of Police Station Lonand, District Satara, under Section 366A, 376 and 506 of IPC and Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The prosecution case as disclosed from the complaint, lodged by the victim girl is that, the victim was serving in a garment shop of

the father of the Applicant where both of them got acquainted. According to the victim, the Applicant had taken her to Jejuri, where both of them had garlanded each other in token of a marriage. Thereafter, the Applicant had sexual intercourse with her in Room No.104 at Peshwe Lodge on 12 December 2019 and thereafter, in Aditi Lodge in Room No.24 at Balaji Nagar, Dhankavdi, Pune on 30 December 2019. In short, according to the victim, she was subjected to sexual abuse on the promise of marriage. However, it was disclosed that the Applicant was already married and had children.

3. I have heard the learned counsel for the parties. Perused record.

4. It is submitted by the learned counsel for the Applicant that the victim was 17 years and 6 months of age on the date of the incident, her date of birth being 21 May 2002. It is submitted that the victim had attained the age of understanding and had voluntarily accompanied the Applicant, after which they had sexual intercourse, which according to the learned counsel was consensual.

5. Learned APP assisted by the learned counsel for the Respondent / Complainant, states that the consent of the victim is not material as she is a 'child' within the meaning of Section 2(d) of

the POCSO Act. It is submitted that the victim got pregnant on account of sexual relations and the pregnancy was aborted. However, the report of DNA matching is positive in which the Applicant is shown to be the biological father of the foetus.

6. Learned counsel for the Complainant – victim has referred to the affidavit dated 8 January 2022 in order to point out that there were threats meted out to the victim and her relatives by and on behalf of the Applicant and therefore, there is possibility of misuse of bail, if granted.

7. I have considered the submissions made. *Prima facie*, it appears that although the victim was a child, she was on the verge of attaining majority being 17 years and 6 months of age as on the date of the incident. Thus, it can be seen that the victim had attained the age of understanding, the nature and the consequences of the Act. The Applicant and the victim had garlanded each other in a temple at Jejuri after which they engaged into sexual intercourse. In this case, the investigation is complete and the chargesheet is filed. The Applicant was arrested on 9 February 2020 and is in custody since then. It was pointed out that the victim has shifted to Pune where she is residing with her mother, while the Applicant is residing at Kapadgaon, Tehsil Khandala, District – Satara. It is not shown that alleged incidents of threat were reported to the police. In my

considered view, the apprehension expressed on behalf of prosecution and the victim, can be taken care of by imposing conditions. Hence, the following order.

ORDER

- (i) The Applicant be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.
- (ii) The Applicant shall report to the Police Station Lonand once in every month during the pendency of the trial.
- (iii) The Applicant shall not directly or indirectly make any attempt to contact the victim or any of her relatives and shall not otherwise tamper with the prosecution evidence.
- (iv) Liberty to the prosecution to apply for cancellation of bail, in the event there is breach of any of these conditions.
- (v) Bail before the learned Special Court.

C.V. BHADANG, J.