

Urmila Ingale

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

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BAIL APPLICATION NO. 2234 OF 2022

Omeshkumar Vipinkumar Singh ..Applicant
vs.
1. The State of Maharashtra
2. XYZ ..Respondents

Mr. Veerdhawal Deshmukh, for applicant.
Ms. A.A. Takalkar, APP for respondent-State.
Mr. Rupesh Maurya, for respondent no. 2.
PI- Mr. Lokre, Gorai Police Station is present.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 16, 2022

P.C. :

1. Heard learned counsel for the applicant and learned APP.
2. This is an application for bail by the applicant- Omeshkumar Vipinkumar Singh in connection with C.R.No. 00/2021 dated 30/10/2021 registered with Charkop Police Station for the offence punishable under sections 376(n), 420 of the Indian Penal Code, 1860 ("IPC", for short) and subsequently registered as C.R. No.56/2021 registered with Gorai Police Station dated 02/11/2021 for offence

punishable under sections 376(2)(n), 471, 354(c), 506 of the IPC and sections 4, 5(1), 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO", for short) along with section 67(a) of the Information Technology Act, 2000.

3. The victim who at the relevant time was 21 years of age lodged the FIR on 30/10/2021. It is her case that she met the applicant in one NCC camp sometime in the year 2016. From 2018, the applicant and the victim were in a relationship. It is submitted that thereafter the applicant had forcible sexual relations with her. In January 2021, the applicant told her that his marriage is fixed with someone else. Thereafter he started avoiding the victim. The FIR came to be filed on 30/10/2021.

4. Learned APP and learned counsel for the victim opposed the application.

5. There is some debate regarding the year of the incident. In the statement recorded on 30/10/2021, the date of commencement is stated by the victim to be sometime after July 2018. The date of birth of the victim is

16/06/2000. If July 2018 is regarded as the relevant date from which the offence commenced, the victim would be 18 years of age and provisions of POCSO would not be attracted. In the supplementary statement dated 11/11/2021, the victim submitted that there was some mistake on her part and in fact the offence under POCSO commenced from the month of July 2017 onwards. Thus, if the supplementary statement of the victim is to be relied upon, then at the relevant time, the victim was 17 years and 1 month of age. To support the contention, learned APP and learned counsel for the victim relied upon the xerox copy of the register of the hotel which the applicant and the victim visited on 07/11/2017.

6. It is further contended that the anticipatory bail application filed in this Court by the applicant was withdrawn. The applicant was arrested on 10/03/2022. A reading of the statement of the victim prima facie would reveal that relationship between the applicant and the victim appears to be consensual. At the relevant time, the victim was over 17 years of age and there is some debate

whether the offence commenced when the victim was 17 years and 1 month old or she had already attained the age of 18 years. The trial Court undoubtedly will consider this aspect of the matter during trial. There is a delay in lodging the FIR.

7. Suffice it to observe that the applicant is in custody since 10/03/2022 i.e. for more than 9 months. There is no possibility of trial commencing any time soon. The investigation is complete. Charge-sheet has been filed. There are no antecedents against the applicant.

8. To allay the apprehension of the victim that the applicant will threaten her, it is necessary to impose some stringent conditions on the applicant. Hence, the following order.

ORDER

(a) The applicant – Omeshkumar Vipinkumar Singh in connection with C.R.No. 00/2021 dated 30/10/2021 registered with Charkop Police Station and subsequently registered as C.R. No.56/2021 registered with Gorai Police Station dated 02/11/2021 shall be released on bail on

furnishing P.R. bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(b) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 4 weeks in lieu of surety.

(c) For initial period of 3 months, the applicant shall not enter the jurisdiction of Greater Mumbai. Thereafter he is permitted to re-enter but shall not visit the area of the local Police Station where the victim resides.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant should not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer of the concerned Police Station and shall keep him updated, if there is any change.

(f) The applicant shall report to the Investigating Officer once a month i.e. on the first Monday of every month between 10.00 a.m. and 1.00 p.m.

9. The application is disposed of.

(M. S. KARNIK, J.)