

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3393 OF 2021

Abhay Shivaji Bansode

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Bharat Gadhavi a/w. Mr. Tejesh Dande, Mr. Aniket Aghade i/b.
Mr. Tejash Dande and Associates, for the Applicant.

Mrs. M.R. Tidke, APP, for the State.

Mr. Nikhil Maneshinde i/b. Mr. Shanice Mansukhani, for
Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : JULY 01, 2022

P.C.:

1. The applicant who is arraigned in C.R. No. 1610 of 2020 registered with Hadapsar police station, Pune for the offences punishable under section 376 of Indian Penal Code, 1860 and section 4 of the Protection of Children from Sexual Offences Act, 2012 has preferred this application to enlarge him on bail.

2. The gravamen of indictment against the applicant runs as under:-

Ms. P (hereinafter referred as 'the victim') was fond of acting. The victim got an opportunity to work with the Director of a movie "Karmyodhha". Shootings were held at Katraj. The applicant was also involved in the said project. The applicant forged friendship

with the victim.

On 13th November, 2020 the applicant made a call to the victim and expressed desire to meet her. Upon being informed that the victim was at Hadapsar, the applicant came thereat along with his friend. They had coffee at a Caffe at Mudhva. Thereafter, the applicant forcibly took the victim to a lodge near Manohar Cloth Center, Hadapsar. The applicant's friend stayed back. The applicant forcibly took the victim to one of the rooms in the said lodge at about 3.00 pm. The applicant had forcible physical relations with the victim, without her consent and despite her resistance. The victim started bleeding. The applicant went away and brought a sanitary pad. However, since there was heavy bleeding and the victim felt that her energy was being sapped, the victim approached Hadapsar police station. She was immediately forwarded for medical examination and treatment. Thereafter, the victim lodged report. The applicant came to be apprehended.

3. I have heard Mr. Gadhavi, learned counsel for the applicant, Mrs. Tidke, learned APP for the State and Mr. Maneshinde, learned counsel, for respondent No. 2/victim.

4. The learned counsel for the applicant strenuously submitted

that in the backdrop of the fact that the victim was more than 17 years of age and the victim and the applicant were in a relationship, the offence punishable under section 376 of the Penal Code cannot be said to have been made out. It was a consensual act on the part of the victim who fully understood the nature and consequences of the act and voluntarily gave consent to physical relations, urged the learned counsel for the applicant.

5. The learned APP and learned counsel for respondent No. 2 countered the submissions on behalf of the applicant.

6. I have carefully perused the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Apparently, the victim was below 18 years of age at the time she was allegedly ravished. In the first information report, the victim had given vivid account of circumstances in which the applicant allegedly forced himself upon her. The violent nature of the act and the consequent bleeding made the victim to immediately approach the police station. Almost instantaneous reporting of the matter to police with complete prosecution version, rules out scope for any improvement and embellishment. The medical examination of the victim, within few hours of the occurrence, lends further support to

the version of the victim. It would suffice to note that the injury the victim claimed to have suffered, in the alleged act, finds mention in the medico legal report.

7. The learned counsel for the applicant attempted to salvage the position by inviting attention of the Court to the statement of the friend of the applicant, who had accompanied the applicant and the victim to the lodge. Emphasis was laid on the fact that the applicant and the victim had gone to the room in the lodge, and he was asked to wait. This fact, according to the learned counsel, implied that the victim voluntarily accompanied the applicant. I find it difficult to draw such an inference, at this stage. On the contrary, a careful perusal of the statement of the friend of the applicant would show that the version narrated by the victim is substantially echoed by the said friend.

8. In order to bolster up the submission that the applicant and the victim were in a relationship, the learned counsel for the applicant banked upon the alleged transcript of the Whatsapp Chat between the applicant and the victim. I have perused the said conversation. It does not advance the cause of the applicant to the extent desired by the applicant.

9. Reliance placed by Mr. Gadhavi, learned counsel for the applicant, on a judgment of this Court in the case of **Anirudha Yadav vs. State of Maharashtra**¹ wherein this Court had exercised the discretion in favour of the applicant therein, despite charge under section 4, 6 and 8 of POCSO Act, does not assist the applicant. In the said case, this Court prima facie found that the victim, though a minor, had surrendered to the physical desire of the applicant therein out of love and affection for him. In contrast, in the case at hand, the victim has categorically asserted that the applicant forced himself upon her and ravished her despite resistance. The fact that the victim straightaway approached the police station from the lodge, where the applicant allegedly exploited her, prima facie militates against the applicant's version of consensual act.

10. For the foregoing reasons, the application deserves to be rejected. Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of

¹ 2020 CLU 500 (Bombay High Court)

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.)