

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

CRIMINAL BAIL APPLICATION NO. 2443 OF 2022

Ismail Jahir Khan	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

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Mr. Aniket Nikam i/by Mr. Amit Icham, Advocate for the Applicant.
Mr. Chetan Damre, Advocate for Respondent No.2.
Mr. N.B. Patil, APP for the Respondent – State.
S.C. Kasarle, PSI, Panchavati Police Station, Present.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th OCTOBER, 2022.

P.C.

1. The Applicant is arrested arrested in C.R. No.I/103/2022 registered with Panvel Police Station for the offence punishable under Sections 376, 376(2)(n) of Indian Penal Code (for short 'IPC') and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that the victim is aged around 16 years. The Accused is known to her. The Accused had proposed her stating that he is in love with her. She had consented for it. They started taking on cell phone. In May, 2021 the Accused told the victim to accompany his friend and leave the house under the pretext of attending party. The victim, the Accused and his friend went to the house of the friend of Accused. Thereafter, the Accused took her

in the bed room of the house and established sexual relationship with her. The Accused promised to perform marriage her with her. The Accused then spoke to his family members about their affair. On 22nd July, 2021, engagement ceremony of the victim and the Accused was performed. It was agreed that marriage will be solemnized after two years since the victim was minor. In November, 2021 the victim went to the house of the friend of the Accused and at that time, Accused had physical relationship with her. Thereafter, the Accused refused to marry the victim. The mother of the victim went to the house of Accused and had talk with the mother of Accused. The Accused refused to marry the victim girl. First Information Report (for short 'FIR') was registered. On completing investigation. Charge-sheet was filed.

3. The Applicant preferred an application for bail before the Additional Sessions Judge, Panvel. The application was rejected vide Order dated 23rd June, 2022. The mother of victim girl filed affidavit before Sessions Court at Panvel stating that, she has no objection for grant of bail to the Accused. The mother of the victim girl has also filed an affidavit before this Court stating that, the Applicant can be granted bail.

4. Learned Advocate for the Applicant submitted that the victim and the Accused were in relationship. The Applicant is in custody

from 13th February, 2022. The investigation is completed and charge-sheet is filed. Further custody of applicant is not necessary.

5. Learned APP submitted that the victim was minor. The Accused had promised that he would perform marriage with the victim. The marriage was not performed. At the time of incident victim was aged around 16 years. The Accused had physical relationship with victim without her consent.

6. Learned Advocate for the complainant submitted that the mother of victim has filed affidavit on behalf of the victim girl stating that, the Applicant can be released on bail.

7. The Applicant is in custody from 13th February, 2022. Charge-sheet is filed. It appears that the victim and the Accused were in relationship. The complainant has alleged that the engagement ceremony of the victim and Accused was performed and the marriage was to be performed after two years. The statement of the victim girl was recorded. Her statement indicates that she was in relationship with the Accused who is aged around 22 years. There was consensual relationship. The history provided by the victim mentions that, she was knowing the Accused. They were in contact through mobile phones. They used to meet each other at Khargar and Panvel area. The Accused assured that he will marry her. There was sexual relationship between them with her consent. Thereafter

the Accused refused to marry her. The Medical examination report refers to the fact that there is evidence of old penetrative vaginal sexual intercourse. No evidence of visible physical injury. The age of the victim is between 15 to 17 years as per radiological examination. Supplementary statement of the complainant/mother of victim was recorded on 16th February, 2022. In the said statement it is stated that the victim girl had told her that she is in love with the Accused. She met the family members of the Accused. They decided to perform marriage between the victim and the Accused, after she attains majority. Engagement ceremony was performed on 22nd July, 2021. However, the Accused refused to perform marriage. The victim had informed her that there was physical relationship against her consent between the Accused and the victim.

8. Considering the aforesaid factual aspects, further detention of the Applicant is not necessary.

ORDER

- i. Criminal Bail Application No. 2443 of 2022 is allowed.
- ii. The Applicant is directed to be released on bail in C.R. No.I/103/2022 registered with Panvel Police Station, Dist. Raigad on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;

- iii.** The Applicant shall attend concerned Police Station once in a month on first Saturday of month between 11:00 am to 01:00 pm till further orders.
- iv.** Application is disposed off.

[PRAKASH D. NAIK, J.]