

Anand

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

BAIL APPLICATION NO. 3430 OF 2021

Balasaheb Ashok Kalbhor .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Ms Sana Raees Khan i/b. M/s. Hulyalkar & Associates,
Advocate, for the Applicant

Mrs. M. R. Tidke, APP, for the Respondent No.1 – State

Mr. Balasaheb G. Ligade, Advocate, for the Respondent No. 2

CORAM : VINAY JOSHI, J.

DATE : 02.05.2022

P. C.

. The applicant is seeking for regular bail in C. R. No. 193 of 2019 registered with the Wanawadi Police Station, Pune for the offence punishable under Sections 376, 376(2) (n), 323, 506(2) of the Indian Penal Code and under Sections 4, 6, 8 & 10 of the Protection of Children from Sexual Offences Act (for short 'POCSO' Act).

2. At the instance of report lodged by mother of victim, aged 17 years, crime was registered. It is the prosecution case that on 21.03.2019, victim – a college going

girl came late to the house. The informant asked the reason on which she disclosed that the applicant, who is her cousin uncle met her in the college. The applicant forcibly took her by motor cycle to a lodging house and had sexual assault. She also disclosed that in the past, on 14.01.2019 and 28.01.2019, the applicant had repeated the similar activities. After knowing the facts from the victim, her mother has lodged report.

3. Initially applicant has denied the age of victim and alleged sexual relationship. The applicant's learned counsel submitted that it is evident from the prosecution case itself that at the most it was consensual relationship. In support of said contention, mobile conversation chat has been produced to show that both of them had intimate relationship. Learned counsel appearing for the intervenor while opposing bail submitted that since the victim was a minor, her consent cannot be considered.

4. Perused the statement of victim as well as informant. It reveals that the victim first time disclosed the

incident dated 21.03.2019. She also disclosed two incidents occurred in the past. Apparently, on earlier occasions despite sexual assault, she has not disclosed the things to anybody. Therefore, there is substance in the submission that both have intimate relationship. No doubt, minor's consent assumes no significance. However, prima facie, it is evident that it is not a case of force or use of compulsion for the alleged act. The medical report nowhere suggest that any force was used.

5. Though, the story was projected that the applicant had also photographed minor's pictures, however, it has come after 15 days from the lodgment of FIR which speaks for itself. The victim girl was at the verge of majority. She was college going girl thereby having sufficient ken of understanding. It is to be proved during the trial that they had physical relationship. The applicant was arrested on 24.03.2019 meaning thereby for the last three years he is in jail. It is informed that till date, charges have not been framed. Certainly, the trial will take considerable time for its disposal. Having regard to all above facts, the applicant has

made out a case for grant of bail. In view of that, the following order.

ORDER

- (i) The Application stands allowed;
- (ii) The applicant namely - Balasaheb Ashok Kalbhor in C. R. No. 193 of 2019 registered with the Wanawadi Police Station, Pune for the offence punishable under Sections 376, 376(2)(n), 323, 506(2) of the Indian Penal Code and under Sections 4, 6, 8 & 10 of the POCSO Act, be released on bail on his furnishing P. R. Bond of Rs. 25,000/- with one or two sureties in the like amount;
- (iii) The applicant shall not enter the territorial jurisdiction of the concerned police station till conclusion of trial;
- (iv) The applicant shall attend the concerned Police Station on every alternate Sunday in between 10.00 a. m. to 12.00 noon till conclusion of trial;
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

6. The Application stands disposed of.

(VINAY JOSHI, J.)