

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

BAIL APPLICATION NO. 2435 OF 2022

Rohit @ Bhaiyya Dilip Kapure

..Applicant

V/s.

The State of Maharashtra & Anr.

..Respondents

Ms. S.P. Parulekar for the Petitioner.

Mr. R.M. Pethe, APP for Respondent/State.

Mrs. Vaishali Nimbalkar, Legal Aid Advocate for Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 19 OCTOBER 2022

P.C.

. This is second bail application by the Applicant-accused for bail.

2. The Applicant has been chargesheeted for the offence punishable under Section 363, 376(2)(i) of IPC and under Section 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012, arising out of Crime No. 643 of 2020 registered with Bhosari Police Station, Pune.

3. The victim in this case is stated to be a girl aged between 14 to 16 years. According to the victim, on 05.12.2020, the

**SNEHA
NITIN
CHAVAN**

Digitally signed
by SNEHA NITIN
CHAVAN
Date: 2022.10.19
18:03:26 +0530

Applicant had taken her to Dighi Hill under the pretext of attending birthday party of Vishal Patil. She claimed that she was made to drink beer and under the influence of the same, the Applicant had sexually abused her. She reported the matter to the police on 06.12.2020, upon which the offence came to be registered and after investigation, a chargesheet is filed.

4. The Applicant was arrested on 24.02.2021 and he is in custody since then.

5. I have heard learned counsel for the Applicant and learned APP as well as learned counsel for the Respondent No.2.

6. A perusal of the order dated 15.02.2022 passed by this court in Criminal Bail Application No. 3342 of 2021 shows that at the relevant time, this Court was required to rely on the report of the ossification test which shows that age of the victim on 09.12.2020 was between 14 to 16 years. The learned counsel for the Applicant points out that the Applicant has sought information from the school where the victim was educating and as per the school record, the date of birth of victim is 03.09.2004, which would indicate that victim was 16 years and 3 months of age on the date of alleged incident. According to the learned counsel for the Applicant, the victim although a 'child', had attained the age of understanding of the nature and the

consequences of the act. It is submitted that the history given to the Medical Officer shows that victim was in a relationship with a different person. According to the learned counsel, there are circumstances to indicate that victim had voluntarily accompanied the Applicant on her own accord. There are no injuries on her person so as to rule out the possibility of forcible sexual abuse on a hill.

7. The learned APP assisted by the learned counsel for Respondent No.2 has submitted that there are no change in circumstances so as to entertain this second bail application. It is submitted that the grounds as raised have already been considered by this Court while rejecting the earlier application and the trial is expedited.

8. I have considered the submissions made. It is true that during the hearing of the earlier bail application, the ground based on the history given to the medical officer and the absence of the injuries on the person of the victim were raised. However, a perusal of para 7 of the order dated 15.02.2022 shows that this Court found that it is only the report of the ossification test which is available to ascertain the age of the victim, which was between 14 to 16 years. Now as per the school record the date of birth is shown to be 03.09.2004 which would indicate that the age of the victim is 16 years and 3 months. The learned counsel for the

Petitioner pointed out that although the trial is expedited still not even the charge is framed as there are prosecutions from the year 2015-16 pending before the Special Court.

9. In my considered view, there is no likelihood of the trial being concluded in the near future. The Applicant is stated to be young boy of 24 years and is in custody for more than 1 ½ years.

10. Considering the over all circumstances, the following order is passed:

ORDER

i) The Applicant **Rohit @ Bhaiyya Dilip Kapure** be released on bail in Crime No.643 of 2020 registered with Bhosari Police Station, Pune, on executing a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

ii) The Applicant shall undertake to remain present before the learned Special Judge, during the course of trial, unless exempted.

iii) The Applicant shall not directly or indirectly make any contact the victim or influence or threaten or otherwise tamper with the prosecution evidence/witnesses in any manner.

iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.

v) Bail bonds to be furnished before the learned Special Court.

vi) It is made clear that the observations herein are essentially of a prima facie nature and the learned Special Judge shall not be influenced by the same at the trial.

vii) Criminal bail application is disposed of in the aforesaid terms.

C.V. BHADANG, J.