

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

CRIMINAL BAIL APPLICATION NO. 3876 OF 2021

Roshan Dilip Powar ..Applicant
Vs.
The State of Maharashtra & Anr. ..Respondents

Mr. Vivek V. Salunkhe i/b. Mr. Abhideep D. Khaladkar, for the Applicant.

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

Mr. Tejesh Dande i/b. Tejesh Dande & Associates, for the Respondent No.2.

**CORAM : C.V. BHADANG, J.
DATE : 1 FEBRUARY 2022
(Through Video Conferencing)**

P.C.

. By this Application, the Applicant-Accused is seeking bail in Crime No.127/2021 of Police Station Alankar, District Pune, under Section 376(2)(n) of Indian Penal Code (IPC) and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act', for short).

2. As per the complaint filed by the victim-girl, there was a love affair between her and the Applicant. The Applicant had sexual intercourse with her on multiple occasion on the promise of

marriage. The incident was informed to her mother on 5 June 2021 after which, the complaint was lodged on 14 June 2021. The victim at the relevant time was 17 years of age, her date of birth being 9 February 2004.

3. The learned Sessions Judge has refused to release the Applicant on bail twice before and after the filing of the chargesheet.

4. According to the informant, her father had died in February 2020. She was staying with her mother. She got acquainted with the Applicant on social media. The Applicant obtained the live location of the informant and used to visit her house in the absence of her mother. The Applicant had forcible sexual intercourse with the informant in second week of December 2020 saying that they will marry after the informant turns 22. Thereafter also the Applicant had sexual intercourse with her on the promise of marriage and also on threats to disclose their relations to her mother.

5. I have heard the learned counsel for the Applicant and the learned APP and also the learned counsel for the Respondent-Complainant. Perused record.

6. The learned counsel for the Applicant submitted that the victim had attained the age of understanding. It is submitted that

the informant and the Applicant were acquainted and had sexual intercourse according to the informant on multiple occasion without the victim raising any grievance or protest till 5 June 2021 when she informed about the incident to her mother. It is pointed out that even thereafter the complaint is not lodged till 14 June 2021. It is submitted that there was no element of force or coercion used by the Applicant. It is submitted that the investigation is complete and no purpose would be served by detaining the applicant behind bars.

7. The learned APP, assisted by the learned counsel for the informant, submitted that the Applicant has induced the victim to engage into sexual intercourse and has abused her in a planned manner. It is pointed out that the Applicant obtained information about the family background of the victim where her father was dead and she was residing with her mother who used to be out, for her job. The Applicant obtained the live location of the victim and then visited her house when the informant was alone. The Applicant then had sexual intercourse with her on the promise of marriage and on subsequent occasion by threatening her of causing harm. It is submitted that the Applicant does not deserve to be released on bail.

8. I have considered the submissions made. The victim was running 17 years of age at the time of the incident. Although she had not reached the legal age for consent, it can be seen that she had

reached the age of understanding of the nature and the consequences of the act. Even according to the victim she got acquainted with the Applicant on social media and was regularly in contact with each other. Even after the first incident in the second week of December 2021, the victim had accompanied the Applicant to his house where they had sexual intercourse. Atleast *prima facie*, there is no element of coercion or force which could be found or inferred at this stage. There is no evidence that the victim was physically harmed. The investigation is complete and the charge sheet is filed. The Applicant was arrested on 14 June 2021 and is in custody since then. In the circumstances, I do not find it necessary to detain the Applicant behind bars pending trial which is likely to take some time particularly looking to the restricted court working hours. Apprehension expressed on behalf of the prosecution and the informant can be taken care of by imposing appropriate conditions.

9. In the result, the following order is passed

ORDER

- (i) The Application is allowed.
- (ii) The Applicant be released on bail on execution of a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.
- (iii) The Applicant shall undertake to remain present during the course of trial.

(iv) The Applicant shall not directly or indirectly make any attempt to contact the victim or any other prosecution witness and shall not otherwise tamper with the prosecution evidence.

(v) The Applicant shall not enter the jurisdiction of the Alankar Police Station, Kothrud Police Station and Deccan Police Station, until further orders.

(vi) In the event of breach of any of the condition, the bail is liable to be cancelled.

(vii) The Criminal Application is disposed of, in the above terms.

C.V. BHADANG, J.