

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

ANTICIPATORY BAIL APPLICATION NO. 2493 OF 2022

Sagar @ Lala Baburao Jadhav

.. Applicant

Vs

State of Maharashtra & Anr.

.. Respondents

Mr. Sharad T. Bhosale for the applicant

Ms Geeta P. Mulekar, APP for the respondent-state.

CORAM : NITIN W. SAMBRE, J.

DATED : 13th September, 2022

P.C.:

1. The applicant is seeking pre-arrest bail in the crime no. 233 of 2022 registered on 12/08/2022 based on the incident dated 17/08/2021 to 03/11/2021, punishable u/s. 376(2)(n) & 506 of IPC read with sections 4 & 6 of the POSCO Act, 2012.
2. The prosecution case is, the brother of the applicant/accused is married to sister of the victim, a minor. Taking undue advantage of the aforesaid relationship, the applicant developed intimacy from which she has carried pregnancy and given birth to a female child on 12/08/2022.
3. The contentions of the counsel for the applicant are, the victim herself has admitted that she has developed affection for the applicant and out of such consensual relationship the girl child

was born. According to him, there is a delay in lodging FIR.

4. Further submissions of the counsel for the applicant for grant of bail are, in the absence of any medical evidence about paternity of the applicant, the Court below ought not to have rejected the prayer for bail. According to him, the applicant is very much available for the investigation and that being so the applicant deserves to be released.

5. Learned APP would oppose the prayer based on the investigation papers.

6. I have appreciated the said submissions.

7. The fact that the victim girl is minor and as such the provisions of POSCO Act are invoked cannot be disputed. The paternity of the female child born to victim is also not disputed in the application by the applicant. The only claim is, delay in filing FIR and the availability of the applicant for investigation.

8. As far as the aforesaid contentions are concerned, the victim girl perhaps was afraid of social impact on her having disclosed carrying pregnancy from the applicant and as such, lodged FIR at delayed stage. As such, the delay cannot be considered at the benefit of the applicant in view of the above background, particularly when the applicant is in relation of the victim girl.

9. The fact remains that under the provisions of POSCO Act the offence alleged against the applicant is punishable with more than 10 years. There is a presumption under the said provision of the Act of commission of the offence. Merely because the victim girl alleged to have developed affection for the applicant and consented for physical relationship will not be a valid consent in law, as she being minor.

10. That being so, no case of bail is made out. The application stands rejected.

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(NITIN W. SAMBRE, J.)