

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Criminal Application (BA) No. 758 of 2022

Vishal Prakash Kharade

Versus

The State of Maharashtra, through Police Station Officer, Police Station
Tiwasa, Dist. Amravati and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mrs. S.S.Jadhav, Advocate for the applicant.

Shri S.D.Sirpurkar, APP for the State / Non-applicant

Shri Sumit Joshi, appointed advocate for the non-
applicant no.2

CORAM : ANIL S. KILOR, J.

DATED : 24th August, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 41 of 2021 registered with Police Station Tiosa, Tq. Tiosa, Dist. Amravati for the offence punishable under Sections 363 and 376(2)(n) of Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POSCO).

2. Mrs. Jadhav, learned counsel for the applicant submits that even if the First Information Report is taken on its face value, it can be seen that there

was a love affairs between the applicant and the victim and the alleged crime is the outcome of the same.

3. She further submits that, applicant is in jail since one year and considering the fact that the chargesheet has been filed, his further custody is not necessary.

4. She lastly argues that, considering the young age of the applicant, he deserves a chance for reformation. Accordingly, she prays for grant of bail.

5. On the other hand, learned Additional Public Prosecutor strongly opposed the application and submits that the victim was 15 years of old at the relevant time and considering the seriousness of the offence this Court may not grant bail.

6. Shri Joshi, learned counsel appearing on behalf of the victim reiterates the submission of the learned Additional Public Prosecutor and prays for rejection of the present application.

7. I have perused the chargesheet and the First Information Report.

8. The co-ordinate Bench of this Court in the case of Sunil Mahadev Patil Vs. State of Maharashtra¹, has observed thus:

“11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to

¹ ABC 2016(1) 34 BOM

know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.

12. The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.*
- (ii) Whether the act is violent or not.*
- (iii) Whether there are antecedents or not.*
- (iv) Whether the offender is capable of repeating the Act or not.*
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.*

(vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future."

9. This Court in the case of *Shubham Suresh Thorat Vs. State of Maharashtra* in Criminal Bail Application Stamp No.3242 of 2020 at Principal Seat, has observed thus:

"8. What makes a young boy turn to crime is a matter of indepth study. Factors like peer pressure, poor education, poor socio-economic status and neglectful childhood may be some factors. Though no crime can be justified on the ground that the circumstances around him makes a person criminal since punishment is the coercion used to enforce the law and it is one of the pillars of modern civilization. Providing a peaceful society life is the duty of a State. Lack of punishment causes the law to lose its face and may result in a lawless society. However the reformative approach to curb crimes and reform the convicts has come up in order to protect the basic rights, a human is entitled to. Across the globe, rehabilitation seeks to bring about fundamental changes in offenders and their behaviour. It generally works through education and psychological transformation to reduce the likelihood of future criminality. The purpose of the reformative theory also known as rehabilitative sentencing is to reform the offender as a person so that he may become a normal law abiding member of the community once again.

The theory of reformation, which is invoked at times on the global front, is not the one which should only be tested at the time when a person is convicted, at the time of commuting of sentence.

Here is a young boy aged 20 years, who is already in conflict with law and as the learned counsel has argued, his long incarceration may turn

him into a hardened criminal and the apprehension cannot be said to unfounded. However, at the same time for commission of the alleged acts which are legally prohibited, he will have to be punished.

9. *The Applicant is barely 20 years old and deserves a chance for reformation through the offence with which he is charged cannot be wiped out and, on conviction, he should suffer the penalty prescribed. However, he deserves one chance of being out of prison to face the trial but also to start his life afresh awaiting his trial. This opportunity will determine whether he repents over his past alleged conduct or whether he continues to follow his antecedents.”*

10. In the teeth of above referred observations, I revert back to the facts of the present case.

11. On perusal of allegations made in the First Information Report, *prima facie*, it appears that there was love affair between the victim and the applicant. Thus, I am of the opinion that applicant deserves a chance of reformation.

12. No doubt the offence is serious and if the offence is proved, the applicant would suffer the penalty as prescribed.

13. Moreover, in this case as the investigation is over and the chargesheet has been filed, further custody of the applicant is not necessary.

14. As far as the apprehension expressed by the learned Additional Public Prosecutor that, if the applicant is released on bail, he may pressurize the

prosecution witnesses, the same can be addressed by imposing certain stringent conditions. Accordingly, I pass the following order.

ORDER

- i. Criminal application is allowed;
- ii. It is directed that the applicants shall be released on bail in Crime No. 41 of 2021 registered with Police Station Tiosa, Tq. Tiosa, Dist. Amravati for the offence punishable under Sections 363 and 376(2)(n) of Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POSCO), on furnishing P.R.Bond of Rs.25,000/- with a solvent surety in the like amount.
- iii. The applicant shall not enter the territorial jurisdiction of Police Station Tiosa, Tq. Tiosa, Dist. Amravati till culmination of the trial, except for the trial.
- iv. The applicant shall provide his address and name of Police Station, which he shall attend on 1st and 16th of each month between 10 am to 12 noon till culmination 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 not to tamper with the evidence;
- vi. State is at liberty to apply for cancellation of bail, in case the applicants commits similar offence or breach the condition;
- vii. Fees of Shri Joshi, learned appointed Advocate be quantified as per rule.

[ANIL S. KILOR, J.]

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SACHINDANAND
K NAIR
Date: 2022.08.25
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