

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.58 OF 2023

**DIGAMBAR PRAKASH THORAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Applicant : Mr. Sonavane Narendra D.
APP for Respondent/State : Mr. S.P. Deshmukh
Advocate for Respondent No.3 : Mr. Sayed Azizuddin Rahimoddin
(Appointed Through Legal Aid)

...
CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 07, 2023

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim.
2. The statement of the victim under Section 164 of the Criminal Procedure Code does not contain the allegations of any type of sex with her. The medical report is also silent about the injuries over her private organ.
3. Learned counsel appearing for the victim has strongly opposed the application contending that she was 13 years old at the time of incident. The story of love affair cannot be considered in view of the judgment of the Hon'ble Supreme Court in the case of X (Minor) Vs. The State of Jharkhand and Anr, Criminal Appeal No.263 of 2022 (Arising Out of SLP (Crl) No.9317 of 2021).

4. Learned APP also strongly opposed the application and argued that the victim was minor and the applicant was major. They were living as husband and wife in the field. So naturally, they must have sex. The medical report reveals that her hymen was healed multiple tears.

5. Learned counsel for the applicant would argue that victim's statement under Section 164 of Criminal Procedure Code is material. She never made complaint against the applicant and more particularly about the violent sex. Therefore, the ratio in the case of X (Minor) (cited supra) would not apply.

6. Perusal of the papers reveals that the victim who was 13 years old at the time of incident did not state against the applicant. In worse case it must be an offence under Section 363 of the Indian Penal Code. To protect the interest of prosecution, certain conditions may be imposed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Digambar Prakash Thorat, be released on bail on executing PB. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with Crime No.190 of 2022, registered with Veergaon Police Station, Tq. Vaijapur, District Aurangabad for the offence punishable under Section 363, 366-A, 376(2)(J)(N), 376(3), 506, 109 of the Indian Penal Code and

Section 4, 6, 17 of the Protection of Children From Sexual Offences Act, on the conditions that;

- (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) The applicant shall not contact the victim on phone or any other mode till conclusion of the trial.
 - (c) The applicant shall not enter the village where the victim resides till the conclusion of the trial.
- (iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the legal fees to the learned counsel appointed for the victim, as per the schedule.

(S.G. MEHARE, J.)