

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

56 BAIL APPLICATION NO.85 OF 2023

SATISH BHIMRAO KONELE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Urgunde Suhas P.
APP for Respondent-State : Mr. K. S. Patil.
Advocate for Respondent No.2 : Mr. Tekwad S. D.

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CORAM : S. G. MEHARE, J.
DATE : 30.01.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for respondent No.2/victim.

2. Learned counsel for the applicant would submit that the evidence of the date of birth of the applicant is weak and suspicious. The applicant never did sex with her. However, due to the pressure, she made allegations of sexual intercourse. The medical evidence does not support the allegation of sex. There were no signs of sex. They were apprehended by the Punjab Police and handed over to the local police. The applicant never induced her. The victim was forcing the applicant to have one mobile phone number. But, it was not

given to her to maintain the relationship. The applicant had never the intention to sex with her. The victim was forcing her to take away from her parents. Hence, to protect her from her parents, he went with her. In the absence of any corroborative piece of evidence, the allegations of forceful sex cannot be believed. The applicant is languishing in jail since the month of August 2022. There were no antecedents to his discredit. He may be granted bail.

3. Learned APP and learned counsel for the victim has vehemently opposed the application. They would submit that the victim was minor at the relevant time. They were apprehended together in another State. It was the applicant, who induced her to elope. She was unable to take an appropriate decision when she went with him. Her allegation of sex is sufficient to believe the case. The offence is serious. The prosecution has *prima facie* evidence to prove the age. It cannot be suspected at this juncture. The applicant may tamper with the prosecution witnesses.

4. Learned counsel for the applicant relied on the case of ***X (Minor) Vs. The State of Jarkhand and another, 2022 LiveLaw (SC) 194***. The facts of those cases were that the victim was barely 13 years old. Hence, the story of love affair was

discarded. Particularly, considering the age of the victim, the bail was refused.

5. It has also been vehemently argued that *prima facie* material is available against the applicant. His explanation for taking the victim away appears unnatural. The offence is serious. The circumstantial evidence is also against the applicant. Therefore, the application may be dismissed.

6. Considering the bonafide certificate and the date of birth as alleged at the time of the incident, the victim was 13 years 10 months old. Though she has alleged about a single time sex with her, the medical evidence does not support the allegations. It is evident that when she was arrested, she had menstruation. There were no injury marks to her private organs. In the absence of corroborative evidence, it would be difficult to believe the allegations of forceful sex. Considering the remaining part of allegation, it appears that the offence under Section 363 is *prima facie* may be made out. There are no allegations of uttering any obscene words in the public place against the victim and her family members. There are no allegations that the victim being the member of Scheduled Castes and Scheduled Tribes, the applicant intentionally committed an offence. If the allegations are considered, the

case may be serious. However, in the absence of corroborative piece of evidence as observed above, it would be difficult to believe the allegations of one time sex. In this peculiar circumstances, the application deserves to be allowed on certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **SATISH BHIMRAO KONELE** be released on bail on furnishing PB. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.382 of 2022, registered by Police Station Degloor, District Nanded, for the offences punishable under Sections 376(3), 363, 366 of the IPC and Section 4 of POCSO Act and Section 3(1)(w)(i)(ii), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the following conditions :
 - (a) The applicant shall not contact the victim or her parents or any other relatives till the conclusion of the trial.

- (b) The applicant shall not tamper with the prosecution witnesses.
- (c) The applicant shall not enter Naigaon Taluka till the conclusion of the trial.
- (d) He shall attend the case on each date of effective hearing.

(S. G. MEHARE, J.)

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vmk/-