

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

BAIL APPLICATION NO.368 OF 2023

GORAKH @ DATTATRAY RADHAKISAN GADEKAR @ PADEKAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rohit Pathwardhan h/f Mr. S. R.
Wakale

APP for Respondent No.1: Mr. S. B. Narwade

Advocate for respondent No.2 : Mayuri Kasturkar Kulkarni
(appointed Through Legal Aid)

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CORAM : S. G. MEHARE, J.

DATE : 11.04.2023

PER COURT :

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent Nos. 1/ State and the learned counsel for respondent No.2/ the victim.

2. The applicant is seeking bail in Crime No. 523 of 2022 registered with Police Station Rhata District Ahmednagar for the offence punishable under Sections 370, 376(2)(m)(n), 323, 504, 506 of Indian Penal Code and Section 4(1), 5, 9 of Immoral Trafficking Act 1956 and Section 3(A), 4, 5, (J), 2 (L), 6, 16, 17 of POCSO Act 2012.

3. The learned counsel for the applicant would argue that the applicant never forced the victim to do sex with the alleged

customers. The maternal aunt of the victim used to send her in the hotels and for that purpose her aunt was hiring him. He never forced her to sit on his bike and she never resisted him. The victim willingly indulged in prostitution. The victim was above 18 years as per her school *bona fide* certificate. The victim never made complaint against anybody. However, she had a dispute with one customer; hence, she lodged the report, after more than one month. It was also learnt that the victim and her mother have also a dispute over the money made from the prostitution. Since the victim was above 18 years, the provisions of POCSO Act would not attract. The *bona fide* certificate of the school would prevail over the ossification test. The applicant is languishing in jail since 24.11.2022. The charge sheet has been filed. The other crimes registered against him have no concern with present crime, as those are not similar crimes. In view of the matter, he deserves bail.

4. The learned A.P.P and learned counsel for the victim have vehemently argued that *prima facie* the offence is serious. The young girl has been dragged into prostitution. The applicant has played an active role. Her ossification test reveals that she was below 18 years. A small girl has been exploited. The applicant was also making money from the profession in which the victim was dragged. If the applicant would be released on bail he may threaten the victim. Hence he may not be granted bail.

5. Perused the papers. There are two age proofs: one is *bona fide* certificate issued on the basis of school admission register and second is ossification test. Calculating the age on the basis of *bona fide* certificate, which prevail over the other age proof including the ossification test report. At the time of the alleged incident, the victim was above 18 years. Therefore, application of the provisions of POCSO falls under the shadow of doubt.

6. As far as the facts of the case and allegations levelled against the applicant are concerned, his role is limited to leave the victim at hotel. The maternal aunt of the victim was used to call him. She did not allege that the applicant forcibly took her to that place. *Prima facie* it appears that she was willingly involved in the profession. Considering the role attributed to the applicant and in absence of allegations that the applicant ever demanded money to the victim, the Court is of the view that the applicant has a good case for bail, on certain conditions.

ORDER

- (i) The application is allowed.
- (ii) Applicant Gorakh @ Dattatray Radhakisan Gadekar @ Padekar be released on bail on furnishing P. B. and S.B. of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in FIR No. 523/2022 registered

with Rahata Police Station, District Ahemdnagar, for the offences punishable under Sections 370, 376(2)(M)(N), 323, 504, 506 of Indian Penal Code and Section 4(1), 5, 9 of Immoral Trafficking Act 1956 and Section 3(A), 4, 5, (J), 2 (L), 6, 16, 17 of POCSO Act 2012 on the following conditions :

- (a) The applicant shall not tamper with the prosecution witnesses.
- (b) The applicant shall not contact the victim or her maternal aunt till the conclusion of the trial.
- (c) He shall attend the trial on each and every effective date.
- (iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad, do pay the fees to the counsel appointed for respondent No.2 as per schedule.
- (iv) Needless to state that the observations are limited to this bail application

(S. G. MEHARE)
JUDGE

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