

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

917 BAIL APPLICATION NO.791 OF 2023

ARJUN @ DADA ROHIDAS TAKALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Rahul R. Karpe.
APP for Respondent-State : Mr. S. B. Narwade.
Advocate for Complainant to assist APP : Mr. Salunke P. B.-
Appointed.

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CORAM : S. G. MEHARE, J.
DATE : 15.06.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the complainant.
2. The applicant is seeking bail in Crime No.332 of 2022, registered at Jamkhed Police Station, District Ahmednagar for the offences punishable under Sections 376(A)(B), 376(2)(F) (N), 363 read with Section 34 of the IPC and Section 4, 6, 17 of the POCSO Act.
3. The applicant was 27 years old and the victim was around 12 years old at the time of the incident. The applicant has a case that the victim and the applicant were living as

husband and wife. However, the family members of the victim were opposing their relationship. Hence, they have falsely implicated in the crime. The offences of the sexual assault have been added after 20 to 24 days from the date of the lodging of the report. The victim being a minor was tutored and forced to give the statement against the applicant/accused. The investigation has been completed. Nothing is to be recovered from the applicant. The victim and the applicant are relatives, but the family members were not happy with their relationship. He never kidnapped the victim and did the forceful sex with her. Considering the facts and circumstances of the case, the applicant may be released on bail.

4. Per contra, learned APP has vehemently opposed the application. He would argue that the victim was below 13 years. Her categorical statement is sufficient to believe that the applicant did sex with her. The applicant kidnapped her. The law is settled that in case of a girl, who is below 13 years though has love affair is not a ground to consider the bail. There was a vast difference in the age of the applicant and the victim. The applicant forced the victim to flee away with him. The offence is serious. Hence, the application deserves to be dismissed.

5. The age of the victim is the prime issue in this case. She was below 13 years. The law is settled that if the girl was below 13 years, though had a love affair, is not a ground to grant the bail. The statement of the victim is material. There is ample evidence against him that he kidnapped the victim and roamed with her for days together posing as husband and wife. Considering the age of the victim, it cannot be accepted that she was competent to give a consent for sex. The offence is apparently serious. Both of them are the resident of the same village. Therefore, the interest of the victim is to be protected.

6. For the above reasons, the Court is not inclined to grant the bail to the applicant. Hence, the bail application stands dismissed.

7. The Secretary, High Court Legal Services, Sub-Committee, Aurangabad do pay the legal charges to advocate Salunke as per the schedule.

(S. G. MEHARE, J.)

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vmk/-