

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1169 OF 2023**

Alishan S/o. Rajkiran Pawar,
Age: 19 years, Occu.: Labour,
R/o. Charthane, Tq. Muktainagar,
District Jalgaon.

..Applicant

Versus

1. The State of Maharashtra,
Through the Officer Incharge,
Muktainagar Police Station,
Taluka Muktainagar, Dist. Jalgaon.

2. XYZ

..Respondents

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Mr. Rajendraraa Deshmukh, Senior Advocate a/w. Mr. Vishal A.
Chavan i/by Mr. Govind A. Kulkarni, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondents-State.
Mr. Sanket Jadhav, Advocate for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 30th AUGUST, 2023.**

PER COURT:-

1. Heard learned counsel for the applicant and learned
APP for the State.

2. The applicant is seeking bail in Crime No.245/2022
registered with Muktainagar Police Station for the offence
punishable under 376, 306 of the Indian Penal Code and Section
4, 5(j)(2) and 6 of POCSO Act.

3. The investigation was set in motion on report given by
police officer Mr. Shravan Gondu Javare. It is alleged that he was
entrusted with the investigation of accidental death of the
deceased aged about 16 years. She died because of poisoning. On

receipt of the postmortem report, it was revealed that she was pregnant. The DNA samples were extracted. It is further alleged that the applicant/accused is biological father of the foetus. Therefore, the report is lodged making out the offence under Section 376 of the Indian Penal Code and Section 4, 5(j) (2) and 6 of the POCSO Act. The applicant was arrested on 03.01.2023. After due investigation, the charge-sheet is filed on 28.02.2023 for the offences as stated above.

4. Mr. Deshmukkh, Senior Advocate appearing for the applicant would submit that, although the sections under the provisions of POCSO Act are added, there is nothing to indicate that the deceased was minor when alleged offence was committed against her. He would submit that investigation failed to collect the exact date of birth of the deceased. He would invite attention of this Court to the statements of the parents of the deceased. They have clearly stated that they have no complaint against anybody. He would submit that in absence of such complaint, the investigation is set in motion through police officer. He would further submit that the possibility of love affair between the applicant and deceased cannot be ruled out. There is no evidence of any forcible act against the deceased. He would further submit that the applicant is behind the bar for more than 8 months. The investigation of the crime is over and charge-sheet is filed long back. He would further submit that the applicant is hardly 19 years of age and there is no criminal antecedent. Further detention of the applicant is of no significance.

5. Per contra, the learned APP opposes the prayer. She would submit that the postmortem report as well as statement of

the parents show that the deceased was aged about 16 years. Therefore, there is *prima facie* evidence to indicate that she was minor. As such, Sections under the provision of POCSO Act are rightly invoked. She would further submit that DNA report clearly indicates that the applicant is father of the foetus, which indicates relationship between the applicant and the deceased. She would further submit that the conduct of the applicant during the course of investigation was objectionable. The release of the applicant may hamper the trial. As such, she urges to reject the application.

6. Having considered the submissions advanced and perusal of the charge-sheet, it can be gathered that there is no evidence to conclude that the deceased was minor at the time of the alleged incident or even at the time of her death. In absence of conclusive evidence on this material aspect, it is doubtful as to whether the provisions of POCSO Act can be invoked in the present case. Secondly, there is no evidence to show that the applicant had established forcible sexual relations with the deceased. None of the witness named in the charge-sheet states about some act on the part of the applicant that will invite penalty under Section 376 of the Indian Penal Code. The parents of the deceased refused to lodge complaint. The applicant is hardly 19 years of age and he is behind the bar for more than 9 months. As argued on behalf of the applicant the possibility of love affair between the applicant and deceased cannot be ruled out. Since investigation is complete and charge-sheet is filed, further detention of the applicant is not necessary. He can be released on bail subject to certain conditions. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Alishan Rajkiran Pawar be released on bail in Crime No.245/2022 registered with Muktainagar Police Station for the offence punishable under 376, 306 of the Indian Penal Code and Section 4, 5(j)(2) and 6 of POCSO Act on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
- a. The applicant shall not tamper with the prosecution evidence in any manner.
- b. The applicant shall not leave State of Maharashtra without permission of the Special Court.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE