

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

BAIL APPLICATION NO.1391 OF 2023

SHIVDAS BANAJI DHUMALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. A. D. Gawale, Advocate for the Applicant.
Mr. S. B. Narwade, APP for Respondents-State.
Ms. S. T. Kazi, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 08th SEPTEMBER, 2023.

PER COURT:-

1. By this application, the applicant seeks regular bail in connection with Crime No.244/2022 registered with Himayatnagar Police Station, Dist. Nanded for the offence punishable under Sections 376(2)(J)(N) of the Indian Penal Code and Section 3 and 4 of the POCSO Act.

2. The investigation was set in motion on the information of the victim herself. It is alleged that her father expired in the year 2021. Since then, she resides alongwith her mother, sister and grandmother. She was acquainted with the accused since before one year of lodging report and she has love affair with him. It is alleged that between 30.10.2022 to 01.11.2022 the accused visited the house of the informant and under the pretext that he will marry her established physical relationship. It appears that statement of the informant under Section 164 of the Criminal Procedure Code is recorded, wherein

she gave different version stating that there was no love affair, as such, the applicant has forcibly established physical relationship. The investigation proceeded on the basis of the information. The school admission extract of victim is collected during the course of investigation, which shows that the age of the informant was just 17 years.

3. The learned Advocate appearing for the applicant would submit that it is a case of love affair between the applicant and the informant. He points out that the applicant is just 19 years of age and victim is 17 years of age. Both are from same locality. He would further point out that first statement of the informant clearly splelt out that there was love affair between her and applicant. He would, therefore, submit that consensus act committed by the applicant would not attract penalty either under the provisions of Indian Penal Code or POCSO Act.

4. The learned APP as well as learned Advocate appearing for the informant vehemently oppose the application. They would further point out that in statement recorded under Section 164 of the Criminal Procedure Code, the informant has specifically denied the love affairs with the applicant.

5. Having considered the submissions advanced, apparently the statement in the FIR itself shows that the applicant and the informant had love affair. Both of them appears to be from tribal area. The practice of early marriage in such area is well known. Apparently, the episode of physical relationship took place in the house of the informant where other family members were also residing. The inference can be drawn

that the consensus relationship was established by the applicant with the informant. Considering the age group of the applicant and the informant, it would be difficult to make out offences levelled against the applicant in the charge-sheet. On *prima facie* consideration of the material, which is made part of the charge-sheet, the case is made out for grant of bail, however, subject to certain conditions. It is made clear that, observations made hereinabove are for *prima facie* consideration and only for disposal of this application. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Shivdas Banaji Dhumale be released on bail in Crime No.244/2022 registered with Himayatnagar Police Station, Dist. Nanded for the offence punishable under Sections 376(2)(J)(N) of the Indian Penal Code and Section 3 and 4 of the POCSO Act on executing 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 attend the proceedings before the Sessions Court on each and every effective date.
 - c. The applicant shall not establish contact with the witnesses named in the charge-sheet.
 - d. The applicant shall not enter village Chinchordi, Tal. Himayatnagar till conclusion of the trial.

(iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2/victim as per schedule.

(iv) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/Sepetmber-2023