

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

APPLICATION FOR CANCELLATION OF BAIL NO.160 OF 2023

X

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Miss Ashwini Lomte a/w Mr.Salunke Sudarshan
APP for Respondents: Mr. S.B. Narwade.
Adv. For respondent No.2 : Mr. F.R. Tandale.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 2nd NOVEMBER, 2023

ORDER :-

The applicant impugns the order dated 2nd August 2023 passed by the Additional Sessions Judge, Ambejogai, in Misc. Criminal Application No. 339 of 23 thereby granting bail to the respondent No.2 /accused in Crime No. 250 or 2023 registered with the police station Ambajogai for the offences punishable under sections 363, 366-A, 376(1), 376(2)(N) of the IPC and under Section 4, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012.

2. The investigation was initiated on the basis of information given by the mother of the victim. The report is in the nature of kidnapping of the victim by unknown persons. The age of the victim at the time of offence is stated to be 17 years and 11 months. Victim was pursuing her education in 12th standard and used to attend private classes. On the basis of the aforesaid information Crime No. 250 or 2023 for the offence under section 363 of the IPC was registered. During the course of investigation the police machinery

traced out the victim at Aurangabad along with the accused. The statement of the victim was recorded, wherein, she disclosed that initially accused was stalking her. There after friendly relations were developed between them. The accused was assuring her of marriage. They continued the love affair. They used to meet at the room of accused. They had maintained physical relationship. As the victim conceived pregnancy, they had decided to disclose their relationship to the parents and get married. However, since she had not attained majority the decision was prolonged. After the end of 12th standard examination, the accused took her to Aurangabad and arranged for a room and they were waiting for attaining her age of majority. In the meanwhile, on on the basis of the information given by her mother the investigation was carried and she is traced in the company of the accused at Aurangabad.

3. The accused applicant moved an application for grant of bail before the learned Session Judge at Ambajogai, which is favourably considered and vide order dated 2nd August 2023 accused/respondent No.2 has been enlarged on bail. The present application takes exception to the aforesid order.

4. Miss Ashwini Lomate along with Mr S.J. Salunke advocates for the applicant would submit that the victim was minor at the time of incident. She conceived pregnancy during minority because of sexual assault at the hands of respondent No.2/accused. Her consent is immaterial in such a case. Serious offence under Section 376 read with provisions of the POCSO Act are invoked. The learned Sessions Judge has erroneously exercised discretion in favour of respondent No.2. In support of her submissions, she relies upon the judgement of the supreme court of India in the matter of **Bhagwan Singh vs Dlipkumar @ Deepu @ Deepak. Reported in AIR ONLINE 2023 SC 655 and in the matter of X (Minor) Vs. State of Jharkhand and another, in Special Leave to Appeal (Cri.) No. 9317 of 2021 dated 21st February 2022.**

6. Mr. Tandale, learned advocate appearing for the respondent No.2 supports the order passed by the learned Sessions Judge. He would contend that from the statement of victim it is evident that it was a case of love affair and no offence can be made out against the respondent No.2 in such circumstances. The learned Sessions Judge, after considering the necessary parameters laid down by the Supreme Court of India has rightly allowed the application for grant of bail which need not be interfered.

7. Having considered the submission advanced, it is to be noted here that when the cancellation of bail is sought, the supervening circumstances developed post grant of bail are required to be taken into account and assume significance. The order granting bail can be interfered when bail is granted on the basis of irrelevant factors or ignoring the material evidence on record. Perusal of the impugned order in the present case would show that the learned Sessions Judge has observed the conduct of the respondent No.2 and victim. Apparently, the victim was 17 years and 11 months old. She was a college going girl. She developed love-affair with the respondent No.2/accused and conceived pregnancy out of consensual sexual relationship. After the end of 12th examination she voluntarily left her home, travelled with respondent No.2/accused to Aurangabad and resided in a rented room. The statement of the victim clearly stipulates that she had intention to marry with the respondent No.2/accused and she was waiting to attain the age of majority.

8. It is true that the victim was minor at the time of incident and even she had conceived pregnancy during her minority because of consensual sexual relationship. Technically speaking, there is scope to invoke provisions of POCSO Act as well as section 376 of IPC. However, in cases where the court finds, from the conduct of the victim and accused that the physical relationship developed by them was out of affinity and love affair maintained by them and the victim is educated with due understanding, the discretion can be exercised for grant of bail to accused.

9. There is no quarrel as regards the legal principals enunciated by the Supreme Court of India in cases referred supra, relied upon by the applicant. However in those cases, the victims were of tender age below 14 years; subjected to sexual abuse on the basis of obscene videos. Conversely, in the present case the victim is practically 18 years of age and voluntarily maintained sexual relationship without any duress.

10. Considering the aforesaid factors and reasoning adopted by the learned Sessions Judge while granting bail, no case is made out for interference. The application for cancellation of bail sans merit, is rejected.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-