

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

29 BAIL APPLICATION NO.1567 OF 2023

MAHESH SOPAN SHINDE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. Shinde Tushar Chandrakant

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

Advocate for respondent No.2 : Mr. V.B. Garud (appointed)

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 23rd OCTOBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 24 of 2021 registered with Sonai Police Station, Taluka Newasa, Dist. Ahmednagar for the offences punishable under Sections 363, 366-A, 376(2)(j)(n) of IPC and Sections 4 and 6 of the POCSO Act.

2. The investigation was set in motion on the basis of the complaint given by informant who is the father of the victim. He states that his daughter is taking education in Ghodeshwari Secondary School_ at Ghodegaon in 8th standard. The informant was on the field of one Vasant Shinde and residing at that place with his family. It is alleged that on 13.1.2021, in the evening, his daughter served him the dinner. Thereafter, she left the home, but she did not return. Accordingly, a missing complaint was filed.

3. It appears that on 1.12.2022 the victim was traced alongwith the applicant at a brick kiln run by Sandip Dalvi at Bahurwadi, Dist. Pune. The applicant has been immediately arrested. Since then he is behind bars. The investigation is complete. Charge sheet is filed. The prayer of the applicant for grant of bail has been rejected by the learned Sessions Judge on 9.6.2022. Hence, the present application.

4. The learned counsel for the applicant would submit that the victim had voluntarily left the home with intention to marry with the applicant. She resided with him for about 11 months without any complaint. The applicant was working at various places. During this time, the victim accompanied him as his wife. He would submit that physical relations, if any, was consensual in nature. The victim had disclosed her intention to marry with the applicant much prior to leaving home. He would submit that the applicant is behind bars for more than 22 months. The trial would take its own course. He would, therefore, urge to release the applicant on bail.

5. Learned APP and the learned advocate appearing for the informant strongly oppose the application. They would submit that the victim was barely 14 years of age at the time of incident. Her consent is immaterial. She is a child within the meaning of POCSO Act. Hence, the provisions of POCSO Act are invoked against the applicant.

6. Having considered the submissions advanced, it is apparent that the victim is consistent on her stand that she had voluntarily left the home with intention to marry with the applicant because they were having a love affair. Section 161 statement of the first informant clearly

depicts that she had disclosed her intention to marry applicant much prior to the date when she left the home. The victim alongwith the applicant had been traced on 6.12.2022. For about 11 months, the applicant and victim resided at various places as husband and wife. She had no complaint about his behaviour. Statement of the victim is also recorded under Section 164 of the Cr.P.C. wherein she repeats her version. She is very clear on her intention to continue her relationship as wife of the applicant. Apparently, the applicant is behind bars for more than 22 months. The trial would take its own course. In view of aforesaid factual aspects, further detention of the applicant would not be necessary. Hence, as case is made out for grant of bail.

ORDER

- (i) The application is allowed.
- (ii) The applicant – Mahesh Sopan Shinde, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in crime No. 24 of 2021 registered with Sonai police station, Taluka Newasa, Dist. Ahmednagar Sections 363, 366-A, 376(2)(j)(n) of IPC and Sections 4 and 6 of the POCSO Act, on the following conditions :-

[a] The applicant shall not tamper with the prosecution evidence.

[b] The applicant shall not establish contact with any person acquainted with the crime.

[c] He shall visit the concerned police station on 15th of every month, between 10.00 am. and 2.00 pm. till conclusion of the trial.

[d] The applicant shall not enter Taluka Newasa except for attending the trial.

[e] Since Mr. V.B. Garud, Advocate is appointed through the Legal Services Authority, his remuneration be released as per Rules.

[f] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-