



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1819 OF 2023

SURESH JORDAR BHIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Amit S. Savale
A.P.P. for Respondent No.1/ State : Mr. S. V. Hange
Advocate for respondent No.2 victim : Mr. A.R. Sayed

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CORAM : S. G. MEHARE, J.
DATE : 20.12.2023

PER COURT :

1. This is a successive bail application of the applicant in crime No. 187 of 2023 registered with Police Station, Mhasawad, District Nandurbar, for the offence punishable under Sections 387(2) (n) and 328 of the Indian Penal Code Sections 4 and 6 of the Protection of Children From Sexual Offences Act, 2012 and Section 5 of the Medical Termination of Pregnancy Act, 1971.

2. Though the earlier bail application was rejected after filing the charge sheet, the learned counsel for the applicant made a concrete statement that while deciding the earlier bail application, the charge sheet was not placed before the Court. Hence, it cannot be said that it was decided on merits. There is a little confusion about this fact, because the lawyer appearing in the earlier application was different. Believing the statement of the lawyer, the bail application is considered

as if filed for the first time after the charge sheet. Today, he has submitted the copy of charge sheet.

3. The learned counsel for the applicant would submit that now-a-days there are large number of cases mushrooming in the society like the case at hand. Many girls between the age 15 to 19 are eloping with their boyfriends and enter into sexual relationship. In most of cases, the boys are also young by age; therefore, another view is possible. He would submit that taking a different view this case may be dealt with and the applicant may be granted bail. He did not deny the DNA report, abortion of the victim, her physical disability and age. Admittedly, the victim was 14 years, when the applicant developed relationship with her and the report was lodged, she was 15 years.

4. To bolster his argument, the learned counsel for the applicant relied on the case of ***Sunil Mahadev Patil Vs. State of Maharashtra 2016 All. M.R. (Cri.) 1712.***

5. In the above case the Court has enlightened the societal changes about the male and female contact in their early ages. The view taken in the case of ***Varadarajan Vs. State of Madras AIR 1965 SC 942*** was also taken into consideration. The Court also discussed about the exposure of the teenagers to sex related issues and the availability of a lot of material to know the sexual relationship between a man and a

woman. It has also been held that because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Commenting on the physical needs, the Court considered the facts before it. The facts of the said case were that the girl of 15 years age had eloped with the accused. Similar was the case of ***Varadarajan*** (supra). In that case, the girl herself called the accused and voluntarily went with the accused; under those circumstances, the Hon'ble Supreme Court interpreted Section 361 of the Indian Penal Code.

6. He further relied on the case of ***Imran Iqbal Shaikh Vs. The State of Maharashtra and another Bail Application No. 997 of 2022 of Bombay High Court at principal seat decided on 26th April, 2023.*** In this case, there is no whisper about the age of the victim, only the age of the accused was narrated. In that case also, the victim narrated before police that she herself left the house with the said accused. She stayed with her friend for two to three days. Since she had left without informing her parents, she was scared to return home. In these peculiar facts, the Court has taken a view that the statement of the first informant *prima facie* indicate that the relationship was consensual.

7. Lastly, he relied on the order of this Bench in the case of ***Gujarya Dilip Pawara Versus The State of Maharashtra and another Bail Application No. 556 of 2022*** dated 11th July 2022. The facts of those cases were that the victim was 15 years of age, she was six months pregnant. The report of DNA was awaiting. Hence, the Court took a view that the accused was 20 years of age, at the relevant time. It will necessarily take time for commencement of trial and conclusion of the trial. On these facts the bail was granted.

8. Each case has its own facts and circumstances. The law is settled that while dealing bail matter, the Court has to appreciate the facts and consider the circumstances of the incident. Herein in this case, the learned counsel for the victim stated that the victim was 53% physically challenged. The accused developed relationship with her when she was 14. When she went to the accused and requested for marriage as she was pregnant, the accused drove her away. He tried to terminate her pregnancy by illegal way. He administered pills due to which she was admitted in the hospital. In the hospital, she was aborted. The D.N.A. report is explicitly against the applicant. The offences committed by the applicant are serious. The learned counsel for the victim has instructions that the accused has already got married and recently his wife has delivered a child. The charge has already

been framed. Having regards to the facts and circumstances of the case, he would submit that this is not a fit case for taking a different view, by considering the societal change and provocation of the young children who indulged in sexual relationship.

9. Similarly, the learned A.P.P. also submitted that the conduct of the accused is material. He would submit that instead of supporting the girl who was pregnant from the accused, he ill-treated her and by misbehaving with her he attempted to abort by unrecognized way. Such method was harmful to her life, but fortunately she could be saved. Her statement recorded under Section 164 of the Code of Criminal Procedure is very specific indicating the conduct of the accused. He kept her with him and administered pills for abortion. The conduct of the accused shows the intention that he was only interested to have a sex with her. The offence is apparently serious. The victim girl is not only minor, but physically challenged. So, there is every chance of tampering with the prosecution witnesses. He prayed to dismiss the application.

10. The case laws, as discussed above were on the different facts. On the contrary, all the facts were in contrast with the facts of the case at hand. The statement of the victim reveals that the accused flatly denied to support the victim when she went to his home saying him

that she is pregnant. Not only this, he tried to abort by administering the pills by way of unrecognized method. Such method may be harmful to the human life. Lastly, she was admitted to the hospital. Though there is no concrete evidence about the marriage of the accused after incident, there seems to be something; if he had married, his conduct goes against him. This is not a fit case to take a different view. Considering the societal change about the teenagers sexual relationship, the offence is apparently serious. The trial is likely to begin and complete in a short time, provided the accused, witnesses and prosecution support the Court.

11. For the above reasons the application stands dismissed.

12. The Secretary, High Court Legal Services Sub- Committee Aurangabad do pay the fees to the learned counsel appointed for the respondent No.2/victim, as per the schedule.

(S. G. MEHARE)
JUDGE

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