



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

930 BAIL APPLICATION NO.1846 OF 2023

**SUBHASH @ CHOTU SHIVA BHILALA
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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Advocate for Applicant : Mr.Bobde Sopan G.
APP for Respondents/State : Mr. A.S. Shinde
Advocate for Respondent No. 2 :Mr. Patunkar Ganesh B.
(appointed Through Legal Aid)

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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 11.12.2023.

PER COURT :

1. The applicant seeks regular bail in connection with Crime No. 119 of 2023 registered with Vaijapur police station, District Aurangabad for the offences punishable under sections 363, 376, 376 (2) (j), 376(3), of the Indian Penal Code and Section 4 and 6 of the Protection of Children From Sexual Offences Act, 2012.

2. Investigation was set in motion on the basis of the information given by father who of the victim. He alleges that on 19.03.2023 his minor daughter/victim had gone missing from home and her whereabouts could not be traced inspite of

several efforts. It appears that on 22.03.2023 the statement of the victim was recorded wherein, she disclosed that she had love affair with the applicant. They were frequently in touch with each other through mobile communication. On 19.03.2023, she fled away from home with an intention to marry. They travelled together to State of Madhya Pradesh and resided in District Dhar at the place of the applicant. On 20.03.2023 she had physical relation with the applicant. Thereafter, she has been brought back. On the basis of aforesaid statement offences punishable under Section 363, 376, 376 (2) (j), 376(3), of the Indian Penal Code and Section 4 and 6 of the Protection of Children From Sexual Offences Act, 2012 have been added.

3. The applicant came to be arrested on 01.05.2023. Since then, he is behind the bar. His prayer for grant of bail has been rejected vide order dated 04.08.2023 passed by the Additional Sessions Judge at Vaijapur. On completion of investigation the charge-sheet came to be filed.

4. Mr. Bobade, learned Advocate appearing for the applicant would submit that it is the case of love affair. The

victim had left her home in company of the applicant with an intention to marry. Accordingly they reached to the village of the applicant in the State of Maddhya Pradesh, where the victim and the applicant stayed together for a short period before they could apprehended by the police. By inviting attention of this Court to the contents of the victim's statement recorded under Section 161, 164 of the Code of Criminal Procedure, he would contend that the act of the victim was voluntary. The applicant had an intention to marry with her. Hence they travelled together towards the State of Maddhya Pradesh.

5. The learned APP strongly opposed the prayer for grant of bail. He would invite attention of this Court to the statement dated 09.05.2023 recorded under Section 164 of the Cr.P.C., wherein, the victim alleges that she was forced for physical relations.

6. Having considered the submissions advanced, it can be gathered that the victim is a minor, aged about 14 years and 9 months. She came in contact with the applicant. They had frequent talks through the mobile phone. Love affair was developed and the victim left her home with an intention to

marry with the applicant. However, within a short span the victim is brought back by police. Her statement under Section 161 of the Cr.P.C. has been recorded, wherein she disclosed in clear terms that she has love affair with the applicant and with an intention to marry with him she left her home. They travelled together to Maddy Pradesh State i.e. at the original residence of the applicant. During short stay they had physical relations. The victim was referred to medical examination. The medical report depicts that no external injury or marks of any force found on the person of victim. In the history given to the Medical Officer she narrated about love affair with the applicant and voluntary act that they fled away with intention to marry.

7. The final opinion recorded in the medical examination report states that no signs of force were seen, however, a possibility of intercourse could not be ruled out. It appears that the statement of the victim is recorded under Section 164 of Cr.P.C. after a period of 50 days wherein, she has given improvised version and the first time used word that applicant forced her for sexual favour. If the aforesaid circumstances are taken into account, although the victim is minor, from her conduct it can be gathered that she

understands wordly affairs. She developed affection for the applicant and left home with an intention to marry with him. Her statement under Section 161 Cr.P.C., so also history recorded by the Medical Officer concur with the aforesaid facts. The statement recorded under Section 164 of the Cr.P.C. records some different version, however, it is after more than 50 days when the victim was brought back to the home and given in the custody of her parents. Looking to the contents of the medical report, the narration given under Section 161 of Cr.P.C. and the history recorded before the Medical Officer, all acts of the applicant appears to be consensual in nature. The investigation in the matter is completed and the charge-sheet is filed. The applicant is behind the bar for about 7 months. In this background, no purpose would be served by continuing further detention of the applicant. Hence the case is made out for grant of bail. Hence following order :

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant – Subhash @ Chotu Shiva Bhilala be enlarged on bail registered with Vijapur police station, District Aurangabad for the offences punishable under sections 363, 376,

376 (2) (j), 376(3), of the Indian Penal Code and Section 4 and 6 of the Protection of Children From Sexual Offences Act, 2012 on his furnishing P.B. & S.B. of Rs.50,000/- (Rs. Fifty Thousand), with additional local surety for the like amount on the following conditions :-

a] The applicant shall not tamper the prosecution evidence.

b] The applicant shall attend all the effective dates before the trial Court and co-operate for early disposal of the application.

c] Learned Advocate Mr. G.B. Patunkar is appointed by the Legal Services Authority, High Court, Aurangabad and his remuneration shall be paid in accordance with the rules.

[d] Needless to mention here that the observations made above are on prima facie consideration of the material on record and are made only for the purpose of deciding the application.

iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

mahajansb/