



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1864 OF 2023

TEJAS MANOHAR NETKE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S.S. Thombre
APP for Respondent No. 1/State : Mr. A.S. Shinde
Advocate for Respondent No. 2 : Mr. D.B. Pokale

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CORAM : S.G. CHAPALGAONKAR, J.

Date of Reservation : 11.12.2023
Date of Pronouncement : 19.12.2023.

PER COURT :

1. The applicant seeks regular bail in connection with Crime No. 385 of 2022, registered with Ashti police station, Tq.Ashti District Beed for the offences punishable under sections 363, 376(2)(N), 323, 344, 506 of the Indian Penal Code and Sections 4,6,8,12 and 17 of the Protection of Children From Sexual Offences Act, 2012 (for short the "POCSO") Act.

2. Investigation was set in motion on the basis of the information given by the victim's father, who alleges that on

27.11.2022 his minor daughter gone missing from his home. In spite of several efforts to find out her whereabouts, she could not be traced out. It is further alleged that the applicant/accused might have kidnapped the victim, since previously similar offence has registered against him.

3. On the basis of such information an offence punishable under Section 363 of the Indian Penal Code has been registered against the applicant.

4. It appears that on 17.07.2023 when victim is brought back her, statement is recorded wherein, she disclosed that she had love affair with the applicant. Previously she had flee away with applicant to Kolhapur, however, on registration of offence under Crime No. 191 of 2022 against the applicant and his consequential arrest, she was residing with her parents. However, when the applicant was enlarged on bail, she had frequent conversation with the applicant through the social media.

5. On 27.10.2022 her parents had been to Faltan. In the night at about 1.00 hrs. she flee away along with the

applicant on his motorcycle leading to registration of Cr. No. 385 of 2022 on complaint of informant/father of victim. The victim went to Majalgaon and stayed together for a period of one month in a rented premises. During this period they had physical relations. After one month's stay at Majalgaon they went to Velu, Taluka Bhore, District Pune on motorcycle. They stayed with maternal aunt of the applicant for a night. The applicant got employment in a Company along with the facility of accommodation. They stayed together for two months in the said accommodation and had established physical relations. After two months the applicant left the job and resided at Velu, Tq Bhore in a rented premises for a period of four months. During stay, they had consistent physical relations. Thereafter, they stayed in a rented premises of one Anil Ghumre. Meanwhile, she got employment in Namdev Textile and resided at Kodanpur Phata. On 12.07.2023, she went to maternal aunt of the applicant, where uncle of the applicant namely Anil Dhus persuaded her to go back to parents. He called her uncle i.e. Kishor Mastud At Velu and asked him to take her back. So as to avoid uncle, both of them went to Kolhapur and stayed there at a lodge and then came back to Arvi. When she had been to the work, her father reached at Arvi, called police and brought back

her.

6. It appears that the applicant has been arrested in pursuance of aforesaid crime on 07.09.2023. He was remanded to police custody till 11.09.2023, since then he is behind the bar.

7. Mr. Thombre, learned Advocate appearing for the applicant would submit that it is a case of love affair between the applicant and the victim and by now, the victim has attained the age of majority. Although she was minor, she had fled away with the applicant on her own volition, however, because of the resistance of her father previously, an offence was registered vide Crime No. 191 of 2022 against the applicant. He was accordingly arrested, however, looking to the circumstances he was enlarged on bail. Again the victim persuaded the applicant to visit her and maintained communication through social media. Due to persistent follow up of the victim, both of them decided to flee away. Accordingly on 27.11.2022 both of them left home and resided together as husband and wife for a period of eight months. The victim never complained about the behaviour of the applicant.

However, after eight months of continuous stay her father brought her back. Her statement under Section 161 of the Code of Criminal Procedure (for short 'Cr.P.C.') is recorded on 17.07.2023 and offences punishable under Section 376 of I.P.C. r/w POCSO Act, 2012 are added. The brother and father of the applicant are also added as accused in the present crime. Mr. Thombre, learned Advocate for the applicant would submit that although the applicant and victim have strong bond and wish to continue their relationship, the father of the victim is coming in their way and creating hurdles. He would submit that after the victim is given in the custody of her father, she has been forced to record statement under Section 164 of Cr.P.C., which is inconsistent with her statement under Section 161 of the Cr.P.C. Some allegations are sought to be made against the applicant which needs to be ignored.

8. Learned APP strongly opposed the prayer for grant of bail. He would submit that the applicant has no respect for law. He do not deserve discretionary relief of bail. The victim is still minor. Previously the applicant has committed similar offences, however, he was released on bail in Crime No. 191 of 2022 vide order dated 04.10.2022, subject to certain conditions. He refers

to condition Nos. 2(i), 2(iii), 2(iv) and 3 and submit that the subsequent conduct of the applicant lead to registration of present crime. It constitutes breach of conditions of bail granted to him vide order dated 04.10.2022 in Crime NO. 191 of 2022. Learned APP further invited attention of this Court to the statement of victim dated 25.07.2023 recorded under Section 164 of Cr.P.C., which indicates that the applicant had induced the minor victim and persistently raped her under threats.

9. Having considered the submissions advanced and after perusal of the record, it is apparent that the victim is minor, her date of birth is stated to be 20.05.2006. Previously Crime No. 191 of 2022 has been registered against the applicant for the offences punishable under Sections 363, 376, 376(2) (j) (n) read with Section 34 of the Indian Penal Code and Section 4, 8, and 12 of the POCSO Act, 2012, wherein he is alleged to have kidnapped minor victim and thereby committed aforesaid offences. In that case the learned Additional Sessions Judge, Beed enlarged the applicant on regular bail vide order dated 04.10.2022. The release of the applicant was subject to various conditions however, the condition No. 2(i), 2(iii), 2(vi) and 3 are relevant, which reads thus :

“2(i) The applicant shall not tamper with the prosecution witnesses and evidence.

2(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

2(vi) Applicant shall not enter in the area of village Takalsing, Tq. Ashti, Dist. Beed till conclusion of trial of this case.

3) If applicant breached any condition then his bail will be canceled.”

10. It is pertinent that after release of the applicant he was consistently in contact with the victim through social media and again flee away with the victim in the night of 27.10.2022. The victim on her own volition accompanied the applicant. They travelled together on a motorcycle from village of the victim towards Majalgaon and stayed for a period of one month in a rented premises. Then they proceeded towards village Velu Tq. Bhor, District Pune. The applicant got a job in a company with facility of stay in the compound, where the applicant and victim resided together for a period of two months. Thereafter, applicant changed his job and resided in a rented premises along with victim for a period of four months. Meanwhile, the victim had also searched a job for her and worked at Kodanpur

Phata with Namdeo Textile. Thereafter, father of the victim came to know about her whereabouts and brought her back with the help of police. All the aforesaid circumstances clearly depicts that the applicant and victim are deeply involved with each other and eager to continue their relationship as husband and wife. The informant, the father of the victim might have some reservations. Naturally, since the victim is minor the father would make an endeavour to protect the victim from continuing of relationship with the applicant. Looking to the date of birth of the victim, yet she has not attained the majority. Technically speaking offences levelled in this case would attract against the applicant. However, considering the conduct of the victim and her affinity towards the applicant it is apparent that father's efforts or recourse of law are failing short to prevent relationship.

11. The fact remains that the applicant and the victim stayed together for a period of eight months as husband and wife, apparently the applicant's parents are in favour of such relationship and because of technical hurdle of minority of the victim the marriage could not be performed.

12. It is true that the applicant was enlarged on bail in previous crime subject to the aforesaid conditions. The learned APP informs that proceeding is initiated for cancellation of bail before the Special Court. Whether the conduct of the applicant constitutes breach of conditions is a subject matter for consideration of the Special Court if an application is moved seeking cancellation of bail by the prosecution. However, while considering the plea for bail in present crime, this Court cannot ignore the conduct of the victim and the fact that the victim on her own volition resided for a period of eight months with the applicant at different places. The contents of victim's statement recorded under Section 161 of Cr.P.C. clearly depicts that she is in deep love with the applicant and she want to continue with her relationship with him. Although, victim's statement recorded under Section 164 of the Cr.P.C., after she is handed over to parents in advance, at this stage the veracity of such statement need not be gone into. In the peculiar facts of the case, a case is made out for grant of bail subject to certain conditions. Hence following order :-

ORDER

- i. Bail Application is hereby allowed.

ii. The applicant – Tajas s/o Manohar Netke, be released on bail in connection with Crime No. 385 of 2022, registered with Ashti police station, Tq. Ashti, District Beed, for the offences punishable under sections 363, 376(2)(N), 323, 344, 506 of the Indian Penal Code and Sections 4, 6, 8, 12 and 17 of the Protection of Children From Sexual Offences Act, 2012, on his furnishing P.B. & S.B. of Rs.50,000/- (Rs. Fifty Thousand), on the following conditions :-

- a] The applicant shall not tamper the prosecution evidence.
- b] The applicant shall not indulged in similar offences.

iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE