



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

BAIL APPLICATION NO.1877 OF 2023

AJAY RAMESH AMBHORE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. A. S. Sawant, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondents-State.
Mr. S. N. Menchirel, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 04th NOVEMBER, 2023.
PRONOUNCED ON : 28th NOVEMBER, 2023.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.50 of 2023 registered with Cantonment (Chawani) Police Station, Dist. Aurangabad for the offences punishable under Sections 363, 376 of the Indian Penal Code and Sections 4, 8, 12 of POCSO Act, 2012.

2. The investigation was set in motion on the basis of the information given by mother of the victim dated 01.02.2023. It is alleged that the victim aged about 13 years left the home without informing anyone. Although she was searched with the relatives and at nearby places, she could not be traced. It is accordingly stated that unknown person induced minor victim and abducted her. On the basis of the aforesaid information, an offence under Section 363 of the Indian Penal Code was registered against unknown accused person. During the course of investigation, victim was traced. Initially, she refused medical examination. Again she left the home without informing anyone. The

statement of the victim has been recorded on 12.02.2023, wherein she states that she had left the home because her mother had scolded her and then stayed in the vicinity of the Gogababa Tekdi for 4-5 days. The supplementary statement of the victim is recorded on 09.03.2023, wherein she states that while she was wondering in the vicinity of the Gogababa Tekdi, accused met her and resided with her for about 7-8 days at the hill. However, she states that she had no physical relationship with the accused during this period. It appears that, on 14.02.2023 the victim was taken to the Government Hospital for medical examination, but she refused to be examined. Again on 08.03.2023 she was taken for medical examination at Government Medical College and Hospital, Aurangabad. She has given narration of the incident wherein she admitted that she was in the company of the applicant who was her boyfriend and stayed with him near Gogababa Hill for 20 days, where they had multiple episodes of sexual intercourse. The report of medical examination confirms the sexual assault. However, there are no traces of using force. After due investigation, the charge-sheet came to be filed against the applicant/accused for aforesaid offence. It appears that, the applicant is arrested on 27.06.2023. Since then, he is behind the bar.

3. Mr. Sawant, learned Advocate appearing for the applicant would submit that there is inordinate delay in lodging the FIR. The statement of the victim recorded under Section 164 of the Criminal Procedure Code depicts that she had no complaint against the applicant or she is not subjected to sexual assault as alleged. Even in the history narrated to the Doctor, victim has referred applicant as her boyfriend. He would further submit that the applicant has been falsely implicated in the aforesaid crime at

the instance of the informant. Previously the applicant was subjected to the prosecution in the Special Case (POCSO) No.13/2020 for offence punishable under Section 354 of the Indian Penal Code and Section 8 of the POCSO Act. The said complaint was instituted by the mother of the victim. On trial, the Special Court acquitted the applicant on 13.01.2023. Immediately, thereafter present complaint has been lodged. He would submit that the applicant is behind the bar for more than four months. Further detention of the applicant would not be necessary. The applicant would be available for trial and also ready to abide by the conditions for admitting him on bail.

4. The learned APP as well as Mr. Menchirel, learned Advocate appearing for the first informant strongly oppose the prayer for grant of bail. They would submit that on 28.01.2023 the victim had left the home without information to anyone. Accordingly, complaint was filed for abduction. On 07.02.2023 the victim was located near Municipal garden at Nandanvan Colony. However, police have failed to send her for medical examination or even inform to the Child Welfare Committee. On the request of the informant with Damini Pathak, the victim was shifted to Juvenile Home for six days. On 13.02.2023 the victim was again given in the custody of the informant. She gone missing immediately on the next day. The police failed to take cognizance of the complaint of the informant. After 21 days i.e. on 08.03.2023 one Dolebai brought victim to the police station. Then she was taken for the medical examination where she disclosed about multiple episodes of sexual intercourse with the applicant, who is aged about 26 years. The consent of the victim is immaterial. Even this cannot be treated as case of love affair, in view of the age difference between victim and the applicant. They would

submit that this is a case of gross violation of rights of minor victim and provisions of POCSO Act. They would submit that the release of the applicant on bail is likely to bring recurrence of the similar episodes.

5. Having considered submissions advanced, apparently the age of the victim was less than 14 years when the alleged offence took place. The history narrated by the victim at the time of her medical examination on 08.03.2023 clearly depicts that because of her argument with mother, she had left the home and went to the applicant, who alleged to be her boyfriend and stayed with him near Gogababa Hill for 20 days. They had multiple episodes of sexual intercourse during this period. The statement of the witnesses confirms that the victim was seen in the company of the applicant during the aforesaid period. The report of medical examination suggests that sexual violence cannot be ruled out, although there are no signs of use of force.

6. Although, it is contended on behalf of the applicant that he has been falsely implicated in the aforesaid crime, *prima facie*, there is evidence to depict his complicity in commission of offence. The age of the victim is less than 14 years. The informant is single mother of the victim. The age of the applicant is 26 years. Even it is assumed that it was consensual relation of the applicant and victim, victim's consent will have to be ignored. Pertinently, in similar circumstances the Supreme Court of India in the matter of ***X (Minor) Vs. The State of Jharkhand and Anr***¹ canceled the bail granted by the High Court observing that "once, *prima facie*, it appears from the material before the Court that victim was barely 13 years of age on the date when alleged

¹ 2022 (2) Criminal CC 248.

offence took place, the ground that there was love affair would not be available for grant of bail.”

7. Considering the aforesaid circumstances, the possibility of recurrence of similar offence in case release of the applicant cannot be ruled out. Considering the aforesaid factual aspects of the case in hand and legal position as espoused in the judgment of the Supreme Court of India, no case is made out for grant of bail. Hence, Bail Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE