

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

BAIL APPLICATION NO.1894 OF 2023

DADA ANIL DHAYGUDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. Adinath B. Jagtap, Advocate for the Applicant.

Mrs. P. V. Diggikar, APP for Respondents-State.

Mr. Bipinchandra Patil, Advocate for Respondent No.3.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 09th NOVEMBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.562 of 2023 registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections 363, 366, 366(a), 376(2)(i)(n), 212 of the Indian Penal Code and Sections 3, 4, 17 of the POCSO Act, 2012.

2. The investigation was set in motion on the basis of information given by father of the victim, who alleges that his daughter is pursuing education in 10th standard. On 10.06.2023 she got missing from home. Although he took efforts to find out her whereabouts, she was not located. As such, apprehending the kidnapping of the minor victim, a complaint has been lodged to police. Accordingly, offence under Section 363 of the Indian Penal Code was registered against unknown person. It appears that on 26.07.2023, the victim girl alongwith applicant were arrested from village Dhok Sangavi and they were brought to the police station. The statement of victim is recorded on 26.07.2023. On the basis of her statement, graver offence under Section 376 of the Indian

Penal Code and offences under POCSO Act have been added. The applicant has been arrested on 27.07.2023. Since then, he is behind the bar. Meanwhile, investigation progressed and charge-sheet came to be filed against the applicant. The prayer of the applicant for grant of bail has been rejected by the Court of Sessions vide order dated 16.10.2023. Hence, this application.

3. Mr. Jagtap, learned Advocate appearing for the applicant would submit that it is a case of love affair between the applicant and the victim. He would submit that the victim is educated girl having passed 10th standard. She on her own volition accompanied the applicant with intention to marry him. They resided together till they were apprehended by the police. Therefore, he submits that the offences as alleged cannot be invoked against the applicant.

4. The learned APP as well as the learned Advocate appearing for the victim oppose the prayer. They would submit that victim is a minor girl. Her consent is immaterial. The victim was induced to accompany under the pretext of marriage. She was subjected to sexual assault and consequently, she conceived pregnancy. The learned Advocate appearing for the victim submits that in view of the definition of child under Section 2(D) of the POCSO Act, the severe offence would attract in this case. Therefore, urges to reject the prayer for grant of bail.

5. Having considered submissions advanced, it is apparent that the victim was aged about 15 years 10 months at the time of incident. The contents of the FIR, so also the statement of the brother of the victim shows that the victim left the house without intimating anyone. The statement of the victim is recorded on 26.07.2023, wherein she states that during

school vacation she had been to her maternal uncle's home, where she got acquaintance with the applicant. Thereafter, they developed affinity for each other. The applicant was asking her for marriage. Therefore, she left the home after end of 10th standard examination and went with the applicant. Thereafter, they stayed together at Vangadari and then traveled to village Ambala Tal. Shirur, Dist. Pune and stayed together at that place. Thereafter, they rented the room at Dhok Sangavi, Dist. Pune and stayed together till they were apprehended by the police. The victim traveled with the applicant all along. During her stay with the applicant, she has never made any attempt to contact her parents. It does not appear that any force was exerted by the applicant during this process.

6. Although it can be observed that the victim is a child aged about 15 years and 10 months and falls within the definition of 'child' under the provisions of POCSO Act, considering totality of circumstances, *prima facie* there is reason to believe that it was a case of love affair. The victim girl is educated upto 10th standard and having knowledge of worldly affairs. Her voluntary act to accompany the applicant and then travel with him clearly demonstrates her intention to marry with the applicant. Considering aforesaid facts, it would not be necessary to continue further detention of the applicant. However, his release shall be subject to stringent conditions. Hence, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Dada Anil Dhaygude, be released on bail in Crime No.562 of 2023 registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections

363, 366, 366(a), 376(2)(i)(n), 212 of the Indian Penal Code and Sections 3, 4, 17 of the POCSO Act, 2012 on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

- a. The applicant shall not tamper with the prosecution evidence in any manner.
- b. The applicant shall not make any attempt to establish contact with the victim or her family members.
- c. The applicant shall not enter village Tulewadi, Vangadari, Tal. Shrigonda till conclusion of trial.
- d. The applicant shall attend each and every effective date before the Trial Court.

(iii) Application is disposed of.

(iv) Since Mr. Patil, learned Advocate is appointed through legal aid to represent respondent no.3/victim, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.3/victim as per schedule.

(S. G. CHAPALGAONKAR)
JUDGE