



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

BAIL APPLICATION NO.1982 OF 2023

SANTOSH ASHOK KAMBLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Arun S. Shejwal, Advocate for the Applicant.
Mrs. P. J. Bharad, APP for Respondents-State.
Mr. R. M. Shaikh, Advocate for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 04th DECEMBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.241/2023 registered with Waluj Police Station, Dist. Aurangabad for the offences punishable under Sections 363, 376(3) of the Indian Penal Code and Sections 4(2) and 8 of the POCSO Act, 2012.

2. The investigation was set in motion on the basis of information given by mother of the victim. She alleges that her daughter aged about 15 years left the home without informing anything and she must have been abducted by unknown persons inducing her. It appears that on 04.08.2023 the statement of the victim has been recorded, who assert that she was in relationship with the applicant since last one and half year. Both of them left the home together and stayed at Shikrapur for about three days. Thereafter, they proceeded to Kamshet, Tal. Mawal, Dist. Pune and stayed in the friend's house where police apprehended her. The victim was subjected to sexual intercourse. The history narrated by the victim at the time of medical examination shows

that it was consensual penovaginal intercourse. Accordingly, offence under Section 376 (3) of the Indian Penal Code and Sections 4(2) and 8 of the POCSO Act were added.

3. The applicant has been arrested on 14.09.2023. Since then, he is behind the bar. His prayer for grant of bail has been rejected by the Sessions Court vide order dated 05.10.2023. The learned Advocate appearing for the applicant would submit that it is a case of love affair between the applicant and the victim. The victim left her home in the company of the applicant and they had consensual sexual relations. He would submit that investigation in the matter is complete. The charge-sheet is filed. Further detention of the applicant would not be necessary.

4. The learned APP for the respondent-State, so also the learned Advocate appearing for the complainant, however oppose the prayer. They would submit that the victim is minor girl aged about 15 years. Her consent is immaterial. The learned APP informs that there are criminal antecedents against the applicant, so also he is married man.

5. Having considered submissions advanced, it is apparent that the victim had called the applicant to her home. She was in relationship with the applicant for more than one and half year and they had love affair. She decided to leave the home in the company of the applicants and on her volition she left the home alongwith applicant. They stayed together for three days at Shikrapur and then traveled to Kamshet, Tal. Mawal, Dist. Pune. During this period, they had physical relations. The medical report, particularly history given by the victim suggests that it was a consensual intercourse. It does not reflect the signs of forcible sexual assault. At this stage, the learned APP informs

that there are criminal antecedents against the applicant and possibility of tampering the evidence cannot be ruled out.

6. However, taking into consideration aforesaid circumstances, although victim is minor, further detention of the applicant need not be continued. Hence, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Santosh Ashok Kamble, be released on bail in Crime No.241/2023 registered with Waluj Police Station, Dist. Aurangabad for the offences punishable under Sections 363, 376(3) of the Indian Penal Code and Sections 4(2) and 8 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 enter Waluj MIDC area, including Hanuman Nagar, Tal. Gangapur, Dist. Aurangabad till conclusion of trial.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE