

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.2153 OF 2022

TUKARAM SHIVAJI BHAPKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Shashikant E. Shekade
APP for Respondent No.1 : Mr. S. P. Sonpawale
Advocate for Respondent No.2 : Mr. V. M. Vibhute
(Appointed Through Legal Aid)
...

CORAM : S. G. MEHARE, J.

DATE : 31-03-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent No.1/State and the learned counsel for respondent No.2/victim.
2. The statement of the victim reveals that she voluntarily fled away with the applicant and stayed with the applicant for about sixteen days. They were residing as husband and wife.
3. The learned counsel for the applicant would submit that the applicant never forced her to flee away. Her family had doubts about their relationship. He never asked her to bring golden ornaments of her mother. He did no wrong with her. However, he was taking her care. Though, he is elder to her, he never took dis-

advantage. It was her conscious decision to flee away with the applicant. Considering her age, she was able to take appropriate decision. After investigation, the chargesheet has been filed. The victim is in the custody of the parents. Hence, he may be granted bail.

4. The learned A.P.P. and the learned counsel for the victim have strongly opposed the application. They would argue that difference in the age between the applicant and the victim is a matter of concern. He induced her to elope and asked to bring golden ornaments of her mother. She was not able to take appropriate decision. Due to inducement, she went with the applicant. She was a minor at the time of the incident. He did sex with her. It is a serious offence.

5. Apparently, there was a considerable difference in the age of the applicant and the victim. However, her conduct reveals that she willingly went with the applicant. She never resisted him during her stay with him for about sixteen days. Her statement reveals that they were living as husband and wife. The effect of considerable age difference, may be considered during the trial on merit. The investigation has been completed and the chargesheet has been filed. In the facts and circumstances, it may not be inappropriate to keep the applicant behind bar. Hence, the order :-

- i) The application is allowed.
- ii) Applicant Tukaram Shivaji Bhapkar be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of like amount in C.R.No.130 of 2022, registered with Police Station Ahmednagar Taluke, District Ahmednagar, for the offence punishable under Sections 363, 366, 376(2)(i)(n) of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, on the following conditions -
 - (a) He shall not contact the victim, her parents or any other witnesses in any mode or manner till the conclusion of the trial.
 - (c) He shall stay away from the village for six months from the date of his release.
- iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad, do pay the fee to the learned counsel appointed for respondent No.2/victim, as per the schedule.

(S. G. MEHARE)
JUDGE