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

BAIL APPLICATION NO.2026 OF 2023

**RAJU @ AVINASH TUKARAM PAWAR
VERSUS**

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant :Mr. Wakale Vijay Shivaji
APP for Respondents: Mr. A.S. Shinde.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 8 DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 241 of 2022 dated 16.12.2022 registered with Soygaon Police Station, Taluka Soygaon, Dist. Aurangabad, for the offences punishable under Sections 363, 366, 366(A), 376(3), 376(2)(n) of IPC and Section 4 of the POCSO Act.

2. The investigation was set in motion on the basis of information given by father of the victim alleging that his daughter aged about 13 years 2 months has gone missing from 15.12.2022. She might have been kidnapped. The investigation progressed. The victim was traced on 23.8.2023 in the company of the applicant. The statement of the victim is recorded under section 161 of Cr.PC. wherein, she disclosed that she had love affair with the applicant. They decided to marry and fled away from home. Thereafter, they resided in a hut near Raktai Mata Temple for a period of 8 months. During this period, they had physical relations. She has conceived pregnancy. The police apprehended them from their house and brought them to police station. The statement of

the victim is also recorded under Section 164 of Cr.PC. wherein, she recorded similar version. Accordingly, offence under section 376 of IPC and the provisions of POCSO Act have been added. The applicant has been arrested on 28.8.2023. Since then, he is behind bars.

3. Mr. Wakale, learned counsel for the applicant would submit that it is a case of love affair. The applicant is a young man aged 21 years. As per the wish and will of the victim, both of them fled away with intention to marry and resided together for almost 8 months. During this period, they had physical relations. He would submit that although various serious offences are levelled against the applicant, in the facts of the case, none of them would attract.

3. The learned APP opposes the prayer for grant of bail on the ground that victim is 14 years of age. Her consent is immaterial. The learned advocate for the informant submits that family members have consensus that they would perform marriage of applicant with the victim. An affidavit filed by the mother of the victim is also placed on record.

4. Having considered the submissions advanced, it is clear from the statement of the victim recorded under Section 161 as well as 164 of Cr.PC that it is a case of love affair between the victim and applicant. Considering the age of the victim and applicant, there is no reason to discard such contention. The victim fled away from her home and stayed in the company of applicant as husband and wife. The victim has conceived pregnancy. Mother of the victim has filed affidavit that family members are at consensus to get them married. The circumstances surfaced on record shows that although technically offence as alleged

may attract in peculiar facts of this case, detention of the applicant need not be continued. Hence, as case is made out for grant of bail.

O R D E R

- (i) The application is allowed.
- (ii) Applicant – Raju @ Avinash S/o. Tukaram Pawar, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand), with one solvent surety of the like amount, in connection with No. 241 of 2022 dated 16.12.2022 registered with Soygaon Police station, Dist. Aurangabad, for the offences punishable under Sections 363, 366, 366(A), 376(3), 376(2)(n) of IPC and Section 4 of the POCSO Act. on the following conditions :

[a] The applicant shall not tamper with the evidence.

[b] The applicant shall attend each and every effective date before the trial court.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-