

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

BAIL APPLICATION NO.2037 OF 2023

**VAIBHAV GAUTAM POKLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Mr. Jadhav N. L.
APP for Respondents: Mrs. P.J. Bharad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 1st DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with crime No. 1057 of 2023 dated 20th July, 2023 registered with police station Topkhana, District Ahmednagar for the offences punishable under sections 376 (2)(f) of IPC and under Section 4,8 and 12 of POCSO Act, 2012.
2. The investigation was set in motion on the basis of information given by father of the deceased. He alleges that he resides alongwith his wife, daughter and son. On 20th July, 2023, his wife informed him that his daughter/victim lost her menstrual period since last 3 months. When she was taken to the hospital, pregnancy of 20 weeks and 2 days was detected. On further inquiry, the victim told that applicant/accused had established sexual relation with her resulting into pregnancy. Pertinently, the accused is the real brother of the victim. Accordingly matter was reported to the police leading to registration of aforesaid crime. It appears that the pregnancy is terminated and DNA samples are collected. After due investigation, charge sheet is filed.

During the course of investigation, the applicant has been arrested on 21st July, 2023. Since then he is behind bars. His prayer for grant of bail has been rejected by the Special Judge, Ahmednagar vide order dated 23.10.2023. Hence, this application.

3. Mr. N.L. Jadhav, learned advocate appearing for the applicant would submit that the applicant is aged about 19 years. The age of the victim at the time of incident was more than 17 years. He would submit that there is nothing to indicate that the accused has forcibly established physical relations with the victim. The FIR has been lodged when pregnancy of 20 weeks was detected. There is nothing on record to establish that the applicant is the biological father of the fetus. The applicant is behind bars since last more than 4 and ½ months. Further detention of the applicant would not be necessary.

4. Learned APP and learned advocate for the complainant would submit that it is unfortunate incident. The victim was minor. Therefore, the provisions of the POCSO Act are rightly invoked.

5. Having considered the submissions advanced, apparently, there is nothing to infer that the applicant has used any force to establish sexual relations with the victim. At the time of filing of the complaint, pregnancy of more than 20 weeks was detected. During this period, no complaint was made by the victim regarding the use of any force by the applicant against her. The applicant is aged 19 years. The report of DNA sample is not available on record by which it can be established the applicant is the biological father of the fetus. The affidavit is filed by the complainant as well as mother of the victim stating that they have no

objection if the applicant is released on bail. Pertinently, all of them are family members. Looking to the peculiar facts of the present case, the age of the victim and applicant, so also absence of DNA report, there is no reason to continue further detention of the applicant. In that view of the matter, a case is made out for grant of bail. Hence, the following order :-

6. ORDER

- (i) The Bail application is allowed.
- (ii) Applicant – Vaibhav S/o. Gautam Pokle, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in connection with Crime No. 1057 of 2023 dated 20th July, 2023 registered with police station Topkhana, District Ahmednagar for the offences punishable under sections 376 (2)(f) of IPC and under Section 4,8 and 12 of POCSO Act, 2012. on the following conditions :-

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

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

[iii] The application stands disposed of.

**[S.G. CHAPALGAONKAR]
JUDGE**

grt/-