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

BAIL APPLICATION NO. 2040 OF 2023

TUSHAR BALASAHEB AHER

....Applicant

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondent

....

Advocate for Applicant : Mr. Harshal Prakash Randhir.
APP for Respondents: Mrs. P.J. Bharad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 22nd DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No.636 of 2023 dated 4.10.2023 registered with Police Station Karjat, District Ahmednagar, for the offences punishable under Sections 363, 376, 506, 354 of IPC and Sections 3, 4, 8 and 12 of POCSO Act.

2. The investigation has been set in motion on the basis of information given by mother of the victim. In nutshell, it is alleged that on 3rd October, 2023, when she had been to the school, her daughter had gone missing. One Nagesh Londhe brought her back. She was yelling. On inquiry, she disclosed that she had friendship with the applicant/accused through *snapchat* account. On 28.9.2023, the applicant persuaded her to meet with him. On 3.10.2023, they decided to meet in front of the school. In the morning, when she had been to the school, the applicant was waiting for her. Then giving false reason to the teacher, she went with the applicant on his motorcycle to Rajdhani Hotel at Daund where the applicant outraged her modesty. Thereafter he dropped her at the school. On the basis of said

information, initially offence under Section 354 of IPC read with Section 12 and 8 of the POCSO Act was registered. It appears that on same day, the statement of the victim was recorded, where she alleges that applicant committed rape on her and then threatened not to disclose to anyone. The applicant came to be arrested on 4.10.2023, since then he is behind bars. His prayer for grant of bail has been rejected by the Sessions Court vide order dated 25.11.2023 after filing charge sheet.

3. Mr Randhir, learned advocate for the applicant would submit that although the victim is a school going girl, aged more than 15 years, understands the worldly affairs. She was in relationship with the applicant. On her volition, she went on motorcycle alongwith the applicant from school. However, when they were caught hold together, present complaint is lodged. He would submit that false allegations of rape made against the applicant. The act of victim was voluntary without any inducement or force on the part of the applicant.

4. Per contra, learned APP and learned advocate appearing for the victim strongly oppose the prayer for grant of bail. They would submit that victim is minor aged about 15 years. The applicant took disadvantage of her minority, induced her to accompany with him and committed rape. Therefore, offence under Section 376 as well as POCSO Act would attract in this case.

5. Having considered the submissions advanced, after giving thoughtful consideration to the contents of the charge sheet, it can be observed that admittedly the applicant and victim were friends through social media. They were frequently in contact with each other. On the date of incident, they had pre-planned meeting at school. The victim by giving false reason to the teacher left the school and accompanied the applicant. They went to the lodge and in the evening time, the applicant dropped her at the school where they were caught together by family friends or relatives. The applicant was caught hold by those persons and victim was taken to home.

6. Pertinently, the FIR was lodged for offence under Section 354 r/w. Section 12 and 8 of the POCSO Act. Subsequently, victim's statement is recorded bring home the ingredients of offence under section 376 of IPC.

7. The medical examination report of the victim indicates that there are no signs of force. No external injury could be noted. Positive findings confirming forcible sexual intercourse could not be recorded in report. Although such possibility is not totally ruled out.

8. The applicant is aged about 21 years. The victim is aged about 15 years of age. She was using social media application and developed relationship with the applicant. Even on the date of the incident, she voluntarily went with the applicant on his motorcycle.

9. Considering the circumstances surfaced on record, the possibility of love affair or consensual relationship can not be ruled out. The investigation in the matter is complete Charge sheet is filed. The applicant is behind bars for more than 2 and ½ months. No criminal antecedents are reported to discredit the applicant. Hence, a case is made out for grant of bail, subject to certain conditions.

: O R D E R :

(I) The application is allowed.

(ii) Applicant – Tushar Balasaheb Aher, 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 Crime No. 636 of 2023 dated 4.10.2023 registered with Police Station Karjat, District Ahmednagar, for the offences punishable under Sections 363, 376, 506, 354 of IPC and Sections 3, 4, 8 and 12 of POCSO Act on the following conditions :-

(a) He shall not tamper with the prosecution witnesses.

(b) He shall not enter village Bhambora, Taluka Karjat or make any attempt to establish contact with the victim;

- (c) The applicant shall attend each and every effective date before the trial court.
- (d) Since Mr. N.K. Tungar, Advocate is appointed to represent the respondent No.2 through Legal Aid Committee, his remuneration be paid as per rules.
- (iii) The application stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-