

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 14 OF 2023**

Manjunath Koli Through His Waife Yasmin ... Applicant
Koli Presently lodged in Judicial Custody
Central Jail

Versus

State of Goa, Through Public Prosecutor & ...Respondents
anr.

Mr. Kautuk Raikar, Advocate with Ms. A. Salkar, Advocate
for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for
the Respondent nos. 1 & 2.

Mr. L. Raghunandan, Advocate appointed Under Legal Aid
Services Scheme, for Respondent no.3.

CORAM: PRAKASH D. NAIK, J
DATED: 28th AUGUST, 2023

ORAL ORDER

1. The applicant is seeking bail in Crime No. 1 of 2022 registered with Women Police Station, Panaji, for offences under Sections 376, 376(2)(j), 376(2)(n), 312, 313 and 315 of Indian Penal Code (IPC), Section 8(2) of Goa Children's Court Act and Sections 4 and 12 of The Protection of Children From Sexual Offences (POCSO) Act.
2. The case of the prosecution is that the victim girl was minor at the time of incident and got acquainted with the applicant-accused. There was physical relationship between them. The victim was pregnant. Pregnancy was terminated. Complaint was lodged by the

mother of the victim. Statement of the victim girl was recorded under Sections 161 and 164 of The Code of Criminal Procedure, 1973, (Cr.P.C.). On completion of investigation, chargesheet was filed.

3. Learned Advocate for the Applicant submitted that the Applicant is in custody from 14.04.2022. The Applicant is not having criminal antecedents. Investigation is complete. Chargesheet was filed. Subsequently, trial had commenced. The evidence of the victim girl was recorded. She has not supported the prosecution case. The victim has categorically stated that the Applicant is not the person who subjected her to sexual assault. Further detention of the Applicant is not necessary. The Applicant is willing to stay out of the jurisdiction of Bicholim, where the victim is residing. No complaint was filed at the instance of the victim or any of her family members against the Applicant or his family members alleging that the victim was threatened in any manner by them.

4. Learned Additional Public Prosecutor submitted that the victim was minor. Her statement was recorded under Sections 161 and 164 of Cr.P.C., which clearly attributes role of sexual assault to the Applicant. Her examination in chief was recorded. At the initial stage, the victim has stated that she was subjected to sexual assault by the Applicant. Thereafter the case was adjourned. The victim changed her mind and subsequently did not support the prosecution

case. This clearly indicates that the victim was under coercion. She was threatened at the instance of accused. The complaint itself indicates that the mother of the victim did not show serious interest in lodging the complaint against the accused. The victim was minor. Her consent, if any, is immaterial. She was subjected to sexual intercourse. Her pregnancy was terminated. Considering these circumstances, bail may not be granted to the Applicant.

5. Learned Advocate for Respondent no.3-victim, reiterated the submissions of learned Additional Public Prosecutor. He submitted that the version of the victim itself indicate that she was pressurized to depose before the Court. She has exonerated the Applicant subsequently and it is obvious that the accused had tampered with the evidence. The presence of the wife of the Applicant is reflected in the statement of the complainant and the victim. The Applicant is a Police Constable. While he is in custody, the victim has not supported the prosecution case. In the event he is released on bail, there is every likelihood that he would tamper with the evidence.

6. The Applicant is in custody from 14.02.2022. The examination in chief of the victim had begun on 14.07.2022. It was concluded on 10.05.2023. It appears that the case was adjourned on several occasions at the instance of prosecution after initial part of the examination in chief was recorded. The victim has initially stated

that she got acquainted with the accused. He used to drop her from her work place to her residence. She was taken to a lodge and there was physical relationship between them on many occasions without using any contraceptive. In March 2022, she noted that there was pain in her stomach. On 12.12.2022, the victim has deposed that she has wrongly given the name of the accused and he was not responsible but some other person is responsible. It is true that the Court has noted that the victim was under stress and it was necessary to give some time to her and assistance of Counsellor. Thereafter, further examination in chief of the victim was recorded and she stated that she did not wish to proceed with the case and cannot say anything in respect of the incident. She was cross examined by the learned Public Prosecutor. However, she did not revert to the prosecution case. The evidence had concluded on 10.05.2023. Statement of the Doctor was recorded during the course of investigation on 21.04.2022, wherein he stated that the victim and her mother had approached him and the date of birth of the victim was stated as 18 years. Medicines were prescribed for the purpose of termination of pregnancy. There is no complaint from the victim or from any of the relatives or family members of the victim of any other threatening or tampering with the witnesses. It is evident that the victim has not supported the prosecution case. The trial is pending and it would not be appropriate to give any finding on appreciating

the evidence of the victim as to what could be the effect of her deposition. However, the fact remains that the victim has turned hostile after initially recording her examination in chief.

7. The Applicant is in custody from the date of his arrest. Considering the aforesaid circumstances, it is not necessary to further detain the Applicant and on certain terms and conditions, bail can be granted. Hence, the following order :

ORDER

(i) Criminal Application (Bail) No. 14 of 2023 is allowed.

(ii) The Applicant is directed to be released on bail in connection with Crime No. 01/2022 registered with Women Police Station, Panaji, Goa, on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount to the satisfaction of the Trial Court.

(iii) The Applicant shall stay out of the jurisdiction of Bicholim, till the conclusion of the trial in the Trial Court.

(iv) The applicant shall attend the trial Court on every date of hearing unless exempted by the trial Court.

(v) The applicant shall furnish his residential address where he will presently stay and all contact details along with his mobile number to the Trial Court as well as the Investigating Officer.

(vi) The applicant shall not tamper with the evidence, nor influence, induce, threaten or coerce the prosecution witnesses and shall not make any attempt to contact or intimidate them.

8. Criminal Application (Bail) no. 14 of 2023, stands disposed of.

PRAKASH D. NAIK, J

ANDREZA PEREIRA

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