

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 6 OF 2023**

Mohd. Rahim Khan (Presently in Judicial custody, Central Jail, Covale)	... Petitioner
<i>Versus</i>	
The police Inspector Officer in charge of Margao Police Station & 2 Ors.	... Respondents

Mr. Rohan P. Desai, Advocate *for the Petitioner.*
Mr. Nikhil Vaze, Additional Public Prosecutor *for the Respondent-State.*
Ms. Barbara Andrade, Advocate *for the Respondent-victim.*

CORAM: M. S. KARNIK, J
DATED: 26th APRIL 2023

ORAL ORDER

1. Heard learned Counsel Mr. Desai for the applicant, learned Additional Public Prosecutor Mr. Vaze for the respondent-State and learned Counsel Ms. Andrade for the respondent-victim.

2. This is an application for bail for the offences registered against the applicant under sections 376, 305, 323, 109, 312 and 511 of the Indian Penal Code (IPC) under Crime No.55/2021 of the Margao Police Station apart from the offence under sections 4 and 16 of The Prevention of Children From Sexual Offences Act, 2012 (POCSO).

3. The applicant was arrested on 21.07.2021 and is now in custody for almost one year and nine months. The applicant at the

relevant time was 24 years of age. The victim in her complaint stated that she was 16 years of age at the relevant time when the first incident of sexual assault on her which is an offence under the aforesaid sections was committed by the applicant. As per the statement, the victim was minor. The trial has commenced. Twelve witnesses are yet to be examined by the prosecution. Three witnesses have already been examined. The victim has been examined.

4. Learned counsel for the applicant invited my attention to the deposition of the victim. The victim was born on 07.08.2002. In her cross examination, she has stated that her relation with the applicant was a love affair and that she was ready to get married to the applicant. It is further stated that the applicant was also in a love relationship with the victim. It is stated by the victim that as the applicant did not marry the victim, that the complaint came to be filed. It has come on record that the victim as well as the applicant consumed 'Ratol' and were hospitalised in Goa Medical College. In the cross examination, the victim stated that the first incident of sexual assault on her without her consent occurred some time in the year 2020.

5. Learned Additional Public Prosecutor opposed the bail application and submitted that the trial has commenced. It is further

submitted that the victim at the relevant time was a minor and, therefore, her consent is immaterial.

6. Notices were issued by this Court to the victim. The Investigating Officer informed that the notices have been duly served and that the victim wanted to engage a Lawyer. The matter was adjourned, however, there is no representative on behalf of the victim. I had therefore requested Ms. Barbara Andrade, learned Counsel, to assist this Court and make submissions on behalf of the victim. Learned counsel strenuously opposed the application for bail. It is submitted that the consent is immaterial as the victim at the relevant time was a minor. It is further submitted that even as per the victim, the sexual intercourse for the first time was without her consent. My attention is invited to the findings of the trial Court while rejecting the application for bail. It is submitted that the applicant had jumped bail in a previously instituted offence against him. It is further pointed out that even after the present offence was registered, the applicant had to be arrested from UP. It is submitted that there is every likelihood that the applicant would jump bail and not attend the trial.

7. It is pertinent to note that in respect of the offence in which the applicant was released on bail, the Investigating Agency has filed 'A' summary report. No doubt, the 'A' summary case is yet to be

accepted. Factually, such case summary has been filed. It is in respect of the earlier offence that the accusation was that the applicant had jumped bail and in the meantime the present offence came to be registered. I do not wish to make any observations which will influence the trial. It is made clear that my observations in this order are limited to the consideration of the aspect of bail and shall not influence the trial Court.

8. From the materials on record, it appears that the applicant was then 24 years of age and was in love relationship with the victim who, *prima facie*, appears to be a major in view of what she has stated in her examination before the trial court. In any case, the victim has been examined and therefore, there is no question of now tampering with the evidence so far as the victim is concerned.

9. In respect of the offence for which the applicant is alleged to have absconded, the 'A' summary case has been filed. The applicant is in custody for more than one year and nine months. Any further detention will be in the nature of pre-trial punishment. The trial had commenced and though the victim is examined, the trial is likely to take long time as nine witnesses are yet to be examined. I am informed that the victim is not residing in the State of Goa. The applicant, therefore, can be enlarged on bail by imposing some stringent conditions. Hence, the following order :

ORDER

(i) The applicant is released on bail upon him furnishing a PR bond of Rs.25,000/- with one or more sureties in the like amount to the satisfaction of the trial Court.

(ii) The applicant shall not establish any contact with the victim or the witnesses.

(iii) The applicant shall not leave the State of Goa without the permission of the trial court. The applicant shall attend trial regularly.

(iv) The applicant shall report to the Margao Police Station once in a week on every Sunday between 10.00 a.m. to 12.00 p.m. commencing from 30.04.2023.

10. I appreciate the assistance of Ms. Barbara Andrade, who appeared on behalf of the victim at my request.

11. Application stands disposed of.

M. S. KARNIK, J

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