

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.2831 OF 2022

Aakash @ Dada Balasaheb Shinde ...Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr.Ritesh Thobde a/w Mr.Sagar S. Tambe, Mr.Changdev Shingade, for the Applicant.

Mr.Amit A. Palkar, APP for the Respondent-State.

CORAM : G.A. SANAP, J.

DATE : 2nd NOVEMBER 2023

P.C:-

. The Applicant/Accused No.1 has made this Application for bail in Crime No.128 of 2022, registered with Pandharpur Rural Police Station, District-Solapur, for the offences punishable under Sections 363, 376, 376(2)(m), 376(3) read with Section 34 of the Indian Penal Code ('IPC' for short) and under Sections 4,6,8 and 12 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' for short).

2. The learned Advocate pointed out that, the Accused Nos.2 and 3 father and brother respectively of the Accused No.1, have been released on bail. The learned Advocate submitted that, the statements made by the victim are self-contradictory as to the sexual assault. It is pointed out that, the statement of the victim recorded by the learned Magistrate under Section 164 of the Cr.P.C. is conspicuously silent about the sexual intercourse. The learned Advocate submitted that, the statement of the victim indicates that the Accused No.1 and victim had love affair and as a reason thereof, on account of the pressure of the family the victim eloped with the accused. The learned Advocate submitted that, considering the age of the victim the defence of consensual act may not be available to the Accused No.1, but the said fact can be taken into consideration for the purpose of appreciating the case of the Accused No.1 for the purpose of deciding his Bail Application. The learned Advocate submitted that, the Accused is innocent. He was arrested on 19th March 2020. The learned Advocate submitted that, charges have not been framed and prospectus of the completion of the trial are very bleak in near

future. The learned Advocate submitted that, in the teeth of the material available on record and in the totality of the facts and circumstances his further incarceration is not warranted. The learned Advocate submitted that, the Accused is ready to abide by the conditions that may be imposed by this Court.

3. The learned APP submitted that, considering the age of the victim on the date of the commission of the offence the defence of the consensual sexual act with the victim is not available to the Accused. The learned APP submitted that, the first hand account of the incident placed on record by the victim clearly indicates that, she was sexually abused. The learned APP, however, conceded that, at the time of the medical examination of the victim the injuries were not found on her private part. The learned APP submitted that, considering the dominant position of the Accused in the village the possibility of tampering with the prosecution evidence and witnesses cannot be ruled out.

4. It is undisputed that, on the date of the report the victim was about 14 years old. Under the law therefore, the defence of consensual sex is not available to the Accused.

However, merely because of this the bail cannot be denied to the Accused, if he is found otherwise entitled to get the bail in the totality of the facts and circumstances obtained on record. The victim has stated consistently in her statement that, she had love affair with the Accused No.1. It is seen from the perusal of the statement that, her uncle had questioned her when she was found talking with unknown persons on the mobile phone. It is seen that, even the uncle had snatched her mobile phone for the purpose of inquiry. She has stated that, in these circumstances she went to the Accused and narrated this episode to him. As far as the 164 Cr.P.C. statement recorded before the learned Magistrate is concerned, she has not stated about the penetrative sexual assault. It is seen that, in the medical examination report of the victim there were no injuries. In my view, these facts and circumstances need to be borne in mind at this stage. I am conscious of the fact that, the merits of the matter and credibility of the evidence cannot be gone into at this stage. The issue of the merits and credibility would be required to be dealt with after a full-fledged trial. In my view, in the facts and circumstances and

particularly the fact that, the detention of the Accused is not necessary for further investigation, his further incarceration would not be warranted. In this case, the Accused is entitled to get bail. The apprehension put forth by the learned APP can be taken care of by imposing appropriate conditions. In my view, the suitable appropriate conditions can ensure the preservation of the evidence of the prosecution in all respects. Accordingly, Application is allowed.

ORDER

(i) The Applicant-Aakash @ Dada Balasaheb Shinde be released on bail in Pandharpur Rural Police Station, District-Solapur, on furnishing PR bond of Rs.25,000/- with one or two sureties in the like amount.

(ii) The Applicant shall not tamper with the prosecution evidence and/or threaten or induce the first informant and other prosecution witness/es.

(iii) The Applicant shall report at Pandharpur Rural Police Station, District-Solapur on the first

Saturday of every month between 11:00 a.m. and 1.00 p.m. to mark his presence.

(iv) The Applicant shall not threaten, induce or pressurize the prosecution witnesses and victim directly or indirectly.

(v) The Applicant shall keep himself out of the Pandharpur Taluka till the conclusion of the trial, except for the purpose of the attending this case and that too with prior intimation to the concerned Police Station.

(vi) Application is allowed in the aforesaid terms.

(G.A. SANAP, J.)