



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

BAIL APPLICATION NO. 463 OF 2023

GANESH DINKAR SHINDE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Mr. D.D. Rananaware for the Applicant.

Ms. Veera Shinde, APP for the State.

Mr. Vaibhav S. Charalwar for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 25, 2023

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel – Mr. Charalwar who was appointed by this Court to represent respondent No.2.

2. This is an application for bail in respect of the offence punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code and Sections 4, 5(l), 6 and 17 of the Protection of Children from Sexual Offences Act, 2012 registered on 12/10/2021 vide C.R. No.376 of 2021 with Vaduj Police Station, District Satara.

3. Learned APP and the learned counsel for respondent No.2 opposed the application.

4. The date of the incident is 10/10/2021. The victim at the relevant time was 15 years and 1 month of age, admittedly a minor. The applicant at the relevant time was 24 years of age. The applicant working with a gas agency. It is the contention of the learned counsel for the applicant that the applicant expressed his desire to marry the victim. The applicant and the victim, therefore, eloped. They went to a friend's house. The applicant and the victim stayed together for nine days. During this period, the applicant had forcible physical relations with the victim on two occasions. On the basis of the complaint lodged by the mother of the victim, the police found the victim along with the applicant on 20/10/2021. The statement of the victim under Section 161 of the Code of Criminal Procedure (Cr.P.C.) came to be recorded.

5. The applicant was arrested on 21/10/2021. The statement of the victim under Section 164 of the Cr.P.C. was recorded on 30/10/2021 which is consistent with her

statement recorded under Section 161 of the Cr.P.C. The medical evidence on record supports the case of the prosecution.

6. While opposing the application, learned APP submitted that the victim being a minor her consent is immaterial. Learned counsel for respondent No.2 relies upon the decision of the Hon'ble Supreme Court in the case of **X (Minor) Vs. State of Jharkhand and Anr.¹**. My attention is particularly invited to paragraph No.6 of the order which reads thus:

"6. The High Court was manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that "there was a love affair" between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that "there was a love affair" between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard

1 Criminal Appeal No. 263 of 2022

to the provisions of Section 376 of IPC and Section 6 of POCSO.”

Learned counsel for respondent No.2 further places reliance on the decision of this Court in the case of **xxxx Vs. State of Goa and Ors.**² decided on 26/06/2023. In my opinion, the decisions relied are distinguishable on facts.

7. The facts on record reveal that the applicant was 24 years of age who eloped with the victim who was 15 years and 1 month of age. The circumstances on record, *prima facie*, reveal that the relationship was consensual in nature. However, the victim being a minor and as rightly submitted by the learned APP, her consent is immaterial. The circumstance about the applicant and the victim being in a love relationship which led to a consensual physical relationship can not be a factor which can be considered in favour of the applicant.

8. It is the contention of learned counsel for the applicant that the romantic relations between the applicant and the victim should not be criminalised. In the facts and circumstances of the present case, it needs to be borne in

² Criminal Application (Main) No. 252 of 2023

mind that the applicant is 24 years of age and has been in custody since 21/10/2021, incarcerated as an undertrial for a period of 1 year and 11 months. The applicant will face the consequences post-trial if he is found guilty. There is nothing on record to indicate that the applicant or his family members have threatened the complainant or the victim or witnesses. Moreover, the applicant does not appear to be a flight risk. There are no criminal antecedents reported against the applicant. The investigation is complete and the charge-sheet has been filed. In my opinion, the apprehension expressed by the learned APP and learned counsel for respondent No.2 that the applicant may contact the victim or intimidate her can be taken care of by imposing stringent conditions.

9. Learned counsel for the applicant, on instructions, submits that if granted bail the applicant will not enter the Taluka Khatav, District Satara. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Ganesh Dinkar Shinde in connection

with C.R. No. 376 of 2021 registered with Vaduj Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.

(c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall attend the Investigating Officer of Vaduj police station once in two months every first Monday of the alternate month between 11.00 a.m. and 1.00 p.m. commencing from October 2023.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the Khatav Taluka after being released on bail, till further orders of the trial Court.

(h) The applicant shall not establish contact or try to threaten the victim.

10. I appreciate the valuable assistance rendered by Mr. Vaibhav S. Charalwar, the learned Advocate, who appeared on behalf of respondent No.2 in this proceeding. Learned advocate may be paid the fees as prescribed by the Legal Aid Services Authority or if not prescribed, the same is quantified at Rs.5000/-.

11. The application is disposed of.

(M. S. KARNIK, J.)