



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

BAIL APPLICATION NO. 683 OF 2023

MHALARI BAPU GAVLI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. Kanishka H. i/b Shubham Mhatre for the Applicant.

Ms. Veera Shinde, APP for the State.

Ms. Meghna Gowalani for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 25, 2023

P.C. :

1. Heard learned counsel for the applicant, learned counsel- Ms. Gowalani for respondent No.2 and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 363 and 376 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'POCSO Act' for short) registered on 20/03/2021 vide C.R. No.148 of 2021 with Hatkanangale Police Station, District Kolhapur.

3. The applicant was arrested on 13/02/2022. The victim though in her statement stated that she was 18 years of age, however, in fact, she was 17 years and 8 months of

age at the relevant time. On 20/03/2021, the victim fled with the applicant who was then 24 years of age. The applicant promised her marriage. Accordingly, from the statement under Section 164 of the Code of Criminal Procedure, it appears that the applicant married the victim. The victim resided with the applicant till December 2021. The victim became pregnant. Later on, the FIR came to be registered by the victim as according to her the applicant fled with another girl.

4. Learned APP as well as learned counsel for respondent No.2 opposed the application.

5. It is submitted that the applicant had forcible sexual relations with the minor on false pretext of marriage. It is further submitted that after the victim became pregnant, the applicant fled with another girl who was related to him. No doubt, the victim was a minor at the time of the incident and therefore, her consent is immaterial. The victim was 17 years and 8 months of age. The victim even after attaining majority sometime in July 2021, resided with the applicant till December 2021. This by itself may not be a factor in

favour of the applicant as the accusations also pertain to the period when the victim was a minor.

6. Learned counsel for the applicant submitted that having regard to the age of the applicant, the victim, the circumstance that the victim voluntarily resided with the applicant for so long, it is contended that the romantic relationship which culminated into marriage should not be criminalised.

7. The applicant is in custody since 13/02/2022 and has been incarcerated for a period of 1 year and 7 months as an undertrial. The trial is likely to take a long time to conclude. Further custody only will be by way of a pre-trial punishment in the facts and circumstance of the case. The applicant will face the consequences post-trial if found guilty. The investigation is complete and the charge-sheet has been filed. In the facts and circumstances of the present case, the applicant can be enlarged on bail by imposing certain stringent conditions as the learned APP and learned counsel for respondent No.2 submits that the victim should not feel threatened by the presence of the

applicant. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Mhalari Bapu Gavli in connection with C.R. No. 148 of 2021 registered with Hatkanangale 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 Hatkanangale police station once in two months every alternate Monday of the month between 11.00 a.m. and 1.00 p.m. commencing 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 the purpose of reporting to the Investigating Officer, the applicant shall not enter the jurisdiction of Hatkanangale Police Station after being released on bail, till the trial concludes.

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

8. The application is disposed of.

9. The Special Judge of trial Court is requested to record the evidence of the victim in terms of Section 35(1) of the POCSO Act expeditiously.

10. I appreciate the assistance rendered by Ms. Meghna Gowalani, the learned Advocate, who appeared on behalf of respondent No.2 in this proceeding.

(M. S. KARNIK, J.)