

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

BAIL APPLICATION NO. 1134 OF 2021

Hemant Dagadu Gholap ..Applicant
VS.
The State of Maharashtra and anr. ..Respondents

Mr. Jagdish Nagar i/b Mr. Jagdish Nagar & Associates, for
the Applicant.

Ms. A. A. Takalkar, APP for the State.

Mr. Veerdhawal P. Deshmukh, for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 24, 2023

P.C. :

- 1.** Heard learned counsel for the applicant, learned counsel for respondent no.2 and learned APP.
- 2.** This is an application for bail in respect of C.R.No. 244 of 2020 dated 08/06/2020 registered with Shahapur Police Station for the offence punishable under sections 376, 376(2)(I), (J), (N), 506 of the Indian Penal Code, 1860 and under sections 4, 5(j)(2) and 8 of the Protection of Children from Sexual Offences Act, 2012
- 3.** The FIR was registered on 08/06/2020. The applicant

was arrested on 17/06/2020. The applicant is in custody for more than 2 years and 8 months. The trial has not commenced and the charge not framed. The applicant at the relevant time was 22 years of age. This is an unfortunate case where the victim who was a minor gave birth to a child. The DNA report indicates that the applicant is the biological father of the child.

4. As per the statement of the victim which was recorded on 10/06/2020, she stated her age to be 19 years. It is stated that on 15/09/2019 unknown person made her unconscious and took her to the jungle and committed the act punishable under the aforesaid sections. Thereafter on 17/06/2020, the supplementary statement of the victim came to be recorded wherein she stated that out of fear that the applicant will make the obscene pictures which he had taken of the applicant viral, she did not name the applicant. It is stated that the applicant had made a video of the act. The applicant had threatened the victim. The victim along with her friend whose statement is recorded at page 73 of the paperbook went to a house along with the

applicant. Her friend waited in the hall. The applicant took the victim inside a room and committed the crime. She did not resist or raise any shouts because of the threat of the circulation of her obscene pictures.

5. Prima facie, from the statement of the victim's friend at page 73 recorded on 04/07/2020 is indicative of consensual relationship between the applicant and the victim. There is an unexplained delay in filing the FIR. The FIR is filed after the child was born. No doubt, if the victim is a minor, the consent is immaterial.

6. So far as the age of the victim is concerned, in her statement she has stated that her age is 19 years. The school leaving certificate of Nutan Vidyalaya & Junior College which is at page 37 indicates her age as 14 years. Along with charge-sheet there is a copy of the nakal pariwar register issued by Grampanchayat officer, Janpad, Balrampur, wherein the year of birth of the victim is shown as 2002, indicating that she was above 17 years of age at the time of incident. So far as the issue of date of the birth of victim is concerned, the same can be tried during trial. I

proceed on the footing that the applicant was a minor, her consent is immaterial. All that can be said at this juncture is that there is a delay in lodging the FIR. The investigation is complete and the charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant is in custody for more than 2 years and 8 months with no possibility of trial concluding any time soon. The applicant is a young boy of 22 years of age. The applicant can be released on bail by imposing the stringent conditions. Hence, the following order.

ORDER

- (a) The application is allowed.
- (b) The applicant – Hemant Dagadu Gholap in connection with C.R. No.244 of 2020 dated 08/06/2020 registered with Shahapur Police Station shall be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant shall not enter the local limits of Shahapur Police Station till the trial is over.

(d) The trial Court is requested to examine the victim within a period of 1 month from the date when this order is produced before it.

(e) Except for the purpose of attending the investigating officer, the applicant not to enter the jurisdiction of Shahapur Police Station.

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

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer of the concerned Police Station and shall keep him updated, if there is any change.

(f) The applicant shall report to the Investigating Officer as and when called for.

(g) These observations are made for the purpose of considering the present application for bail and the trial court not to be influenced by any of the observations made in this order.

7. The application is disposed of.

8. I appreciate the assistance rendered by Mr.

Veerdhawal P. Deshmukh learned advocate, who was requested to appear on behalf of the victim.

(M. S. KARNIK, J.)