



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

CRIMINAL BAIL APPLICATION NO.974 OF 2022

Ganesh Sukhdev Tonde

...Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

- . Dr. Uday P. Warunjikar a/w. Ms. Sonal R. Chavan I.by Mr. Mayur A. Parab for applicant.
- . Mr. Amit A. Palkar – APP for the State.
- . Ms. Supriya Kak, appointed advocate for respondent no. 3
- . Mr. Inamdar-IO-API, Dindoshi Police Station, Present.

CORAM : G.A. SANAP, J.

DATE : 30th OCTOBER 2023

PC:-

1. The applicant-accused no. 1 has made this application for bail under section 439 of Cr.PC. in Crime bearing No. 787 of 2021, registered with Dindoshi Police Station for the offences punishable under sections 363, 376 read with 34 of IPC and under section 4 of the Protection of Children from Sexual Offences Act, 2012.

2. Learned advocate for the accused no.1 submitted that on the date of alleged incident the victim who was 16

years old. It is pointed out that she was of the age of understanding. Learned advocate submitted that there was love affair between accused no. 1 and victim and as such physical relation between them was consensual. Learned advocate pointed out that in the history of assault narrated by the victim at the time of medical examination, no role was attributed to the accused no. 2 but a specific role was attributed to accused no. 1-Yogesh. Learned advocate submitted that considering the fact that victim girl and the accused no. 2 had love affair and which ultimately culminated into the physical relationship, has to be considered while deciding his bail application. Learned advocate submitted that the accused no. 2 is ready to abide by the conditions that may be imposed by this Court.

3. Learned APP submitted that victim has attributed a specific role to accused no. 2 in 164 statement of Cr.P.C. recorded by learned Magistrate. Learned APP submitted that accused no. 2 and the victim are from the same Taluka and therefore, the possibility of the accused no. 2 pressurizing the victim and the witnesses cannot be ruled out. Learned APP

submitted that considering the fact that the victim was minor on the date of commission of offence, the defence of consensual Act would not be relevant.

4. Learned advocate appearing for the victim has submitted that considering the dominant position of the accused no. 2 the possibility of the accused pressurizing and threatening the victim and family members cannot be ruled out. Learned advocate further submitted that if the accused no. 2 is released on bail then he may indulge in establishing the contact with the victim girl.

5. In order to appreciate the rival submissions, I have been gone through the record and proceedings. It is seen that the victim on the date of the crime was more than 16 years of age. It is therefore apparent that she has attained the age of understanding. It is case of the prosecution that the accused no. 2 and the victim met via Facebook and thereafter the said acquaintance blossomed into love affair. It appears that the parents of the victim on being confronted with this affair sent the victim to Mumbai at her Aunty and uncle's place. It appears that the victim and the accused no. 2 established contacts with

each other and decided to run away. It is seen that accused no. 1 Yogesh who is a friend of accused no. 2 was requested by accused no. 2 to extend help and co-operation. It is seen that the accused no. 1-Yogesh extended the help to carry the victim girl at Nashik but he forcibly committed sexual assault on the victim girl. It is seen on perusal of medical report that while narrating history of assault the victim girl has not stated anything about the sexual assault by the accused no. 2 but has stated that she was sexually assaulted and abused by Yogesh. It appears that accused Yogesh took the advantage of situation and more particularly the helpless condition of the victim girl. In this case it appears that the role of Yogesh is more serious than the role of accused no. 2.

6. The accused no. 2 is behind bar's from 28.11.2021. In my considered opinion, in the facts and circumstances, further incarceration of the accused no. 2 is not warranted in this case. It is true that in the statement recorded under section 164 before learned Magistrate the victim has attributed some role to the accused no. 2 as well. However it appears that the said role attributed to him was prior to the visits of the victim

girl to the place aunty and uncle at Mumbai.

7. In the facts and circumstances, the applicant no. 2 has made out case for bail. The appreciation placed on record by the learned APP and the learned advocate appointed to represent the victim can be taken care of by imposing suitable conditions. Hence the following order.

ORDER

- (i) The criminal application is allowed.
- (ii) Applicant/accused – Ganesh Sukhdev Tonde be released on bail in C.R. No. 787 of 2021, registered with Police Station Dindoshi, for the offences punishable under Sections 363, 376 read with 34 of IPC and under section 4 of the Protection of Children from Sexual Offences Act, 2012, on his furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with solvent surety in the like amount.
- (iii) The applicant shall not in any way tamper with the prosecution evidence.
- (iv) The applicant shall not pressurize or threaten the prosecution witnesses and victim.
- (v) The applicant-accused shall not enter the entire Sinner Taluka, till the completion of the trial.

vi) The applicant shall provide his address after he released on bail to Dindoshi Police Station with his phone number.

8. The application stands disposed of.
9. Fees of appointed learned counsel be paid as per rules.

(G.A. SANAP, J.)