



Diksha Rane

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

BAIL APPLICATION NO.1458/2023

AVINASH GOPICHAND CHAVAN

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Shailesh Kharat for the applicant.

Ms. Rutuja Ambekar, APP for the State.

Adv. Trupti Khamkar for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 26, 2023.

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the respondent no.2.

2. This is an application for bail in respect of the offence punishable under Sections 363, 376, 376(2)(n) of the Indian Penal Code (hereafter 'IPC' for short) read with Section 4, 8 and 12 Protection of Children from Sexual Offences Act, 2012 (hereafter 'the POCSO Act' for short) registered on 28/11/2021 vide C.R. No.645/2021 with Dehu Road Police Station, Pune.

3. The victim at the relevant time when she left the

house on 27/11/2021 along with the applicant was 15 years old. The applicant is 22 years of age. The victim left the house without informing anyone. The First Information Report (FIR) came to be registered on 28/11/2021 by the mother of the victim. Almost a year later on 10/11/2022, the police traced the victim. In the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, the victim has stated that she had gone with the applicant on her own freewill. It is further stated by the victim that she does not have any grievance against the applicant. However, it is stated that presently she wants to reside with her parents. The victim further stated that during the period she was staying with the applicant, the applicant was assaulting her. The victim suffered a miscarriage.

4. Learned APP and learned counsel for the respondent no.2 opposed the application for bail. It is further stated that looking at the conduct of the applicant, the victim does not feel safe by his presence.

5. Learned counsel for the applicant submitted that the applicant and the victim as a result of the love affair

decided to marry and in fact stayed together for one year. It is further submitted that the romantic relationship between the couple should not be criminalized.

6. The applicant was arrested on 9/11/2022. The applicant is 22 years of age. Looking at the age of the victim, the consent of the victim is immaterial as the provisions of the POCSO Act are invoked. In the facts and circumstances of the case, I am inclined to enlarge the applicant on bail as further custody of the applicant will only be by way of pre-trial punishment. The applicant will undoubtedly face the consequences post trial if the charges against him are proved. It is, however, necessary to safeguard the interest of the complainant and the victim considering the apprehension expressed.

7. The applicant is in custody for more than ten months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. In my opinion, the applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Avinash Gopichand Chavan in connection with C.R. No.645/2021 with Dehu Road Police Station, Pune, 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 Chaturshringi police station, Pune, once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (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 Maval Taluka and Pimpri-Chinchwad area, after being released on bail, till the trial concludes.

(h) The applicant shall attend the trial regularly.

8. The application is disposed of.

9. I express my gratitude for the able assistance rendered by the advocate- Ms. Trupti Khamkar representing the respondent no.2. The Legal Services Authorities may pay her the fees as prescribed.

(M. S. KARNIK, J.)