

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2139 OF 2022

Alok Vijaykumar Singh

.... Applicant

Versus

The State of Maharashtra & Anr.

.... Respondents

Ms. Anima Mishra a/w Adv. S. T. Pandey, Mr. Arvind Singh, Adv. Anuj Singh, Adv. Ritu Singh, Ms. Kajal, Mr. Nagesh Avhad and Adv. Pushpam Mishra i/b SBG Law, Advocate for the Applicant.

Ms. P. N. Dabholkar, APP for Respondent No.1-State.

Mr. Ajinkya Badar a/w Adv. Sampada Junnare – Badar for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th OCTOBER, 2023.

P.C. :

1. By this application, applicant is seeking bail in C. R. No. 634 of 2021 registered with Manpada police station, Dombivali, Kalyan, Dist- Thane for the offences punishable under sections 376(3), 506 of the Indian Penal Code, 1860 (for short “IPC”) and sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) and section 67 of the Information and Technology Act, 2000.

2. It is prosecution’s case that on 31st October, 2021 FIR was

lodged by the mother of the victim. Applicant was tuition teacher of her daughter/victim. One day complainant checked the mobile phone of her daughter/victim and found some vulgar/obscene messages. Upon checking the sender, it was the applicant. Complainant took her daughter/victim in confidence and questioned her about the facts. She then revealed that once when she had been to her tuition classes to show her result to applicant at that time, he had hugged and kissed her. Applicant also sexually assaulted her by putting his finger in to her genitals and applicant repeated the same incident for five to six times on different occasions. Applicant also threatened the victim not to tell the incident to anyone otherwise he would kill her parents. The victim got scared and did not reveal the said incident to her parents. But she informed the incident to her friend, who also revealed to her that she was also victimized by the applicant.

3. It is contention of learned counsel for the applicant that applicant has been falsely implicated in this case. At the time of incident the victim was not student of the applicant. No date or day is mentioned about the incident. The incident had happened out of love affair, victim was more than 16 years old. The incident came to know

when victim's mother checked the mobile phone of victim. Applicant is 27 years old. There was no sexual assault by the applicant. The WhatsApp chats exchanged between the applicant and victim shows there was friendly relationship between them. Applicant is behind bar for more than two years. Hence, requested to allow the application. She relied on judgment ***Sunil Mahadev Patil vs. State of Maharashtra ABC 2016 (I) 34 BOM***.

4. It is contention of learned counsel for the respondent no.2 that applicant was teacher of the victim, it was not expected from the teacher to do such heinous act with the students. As per the statement of victim, applicant had inserted finger in her private part. Learned counsel further submitted that applicant has not committed this act only with the victim but he had committed the said act with friend of the victim. The medical report corroborate the statements of victim. The victim is below 16 years of age. There is *prima facie* against the applicant. Hence, requested to reject the application.

5. Learned APP reiterates the submissions of learned counsel for the respondent no.2.

6. I have heard all learned counsel. Perused FIR and charge-sheet.

7. The allegations against the applicant are that he had inserted the finger in the private part of the victim and her friend and he had hugged and kissed the victim. The statements of victim and her friend under Section 164 of Criminal Procedure Code, corroborates the prosecution case. The medical report corroborates the victim's statement about insertion of finger by the applicant. Victims were the students of the applicant. They have no reason to implicate the applicant in false case. Though learned counsel for the applicant states that it was out of love and affair but it appears that it was not out of love and affair. Moreover, Hon'ble Apex Court in the case of *X(Minor) versus the State of Jharkhand and anr.* reported in 2022 LiveLaw (SC) 194 has held that there was a love affair between applicant and 2nd respondent as well as alleged refusal to marry, are the circumstances which will have no bearing in the grant of bail. In present case one victim is 16 years old and other victim is below 15 years of age. There is strong *prima facie* case against the applicant. I have gone through the case law cited by the learned counsel for the

applicant. The facts of cited case and present case are different. As in present case, applicant had sexually assaulted two victims.

8. In view of above, I pass following order.

ORDER

i. Application is rejected.

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SATISH
KILAJE

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by SONALI
SATISH KILAJE
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(SHIVKUMAR DIGE, J.)