

VINA
ARVIND
KHADPE

Digitally
signed by
VINA
ARVIND
KHADPE
Date:
2023.11.29
17:39:16
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1990 OF 2022

Jayesh Vilas Khandekar

....Applicant

Versus

The State of Maharashtra and anr.

....Respondents

Mr. Bhanudas L. Jagtap for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent - State.

Ms. Aditi S. Naikare, appointed advocate a/w Mr. Rushikesh S. Kekane for the Respondent No.2.

PSI S. R. Salunkhe, Kurar Police Station present in Court.

CORAM : G. A. SANAP, J.

DATE : 29th NOVEMBER, 2023.

P.C. :

1. The applicant / accused has made this Application for bail in Crime No.83 of 2022 (POCSO Spl. Case No.162/22) for the offences punishable under Sections 363, 376, 354 of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard the learned advocate for the applicant / accused, the learned APP for the respondent - State and the learned advocate

appointed to represent respondent no.2.

3. Perused the record and proceedings.

4. Learned advocate for the accused submitted that the accused and victim girl had a love affair. It is pointed out on the basis of the documents compiled in the charge-sheet that the family members of the accused had objected for the said relationship. They had decided to prevent the victim girl from continuing her relation with the accused. Learned advocate further submitted that the victim girl had decided to commit suicide. It is pointed out that on the way to execute the plan of suicide, she made a phone call to the accused and called him. It is pointed out that at the instance and insistence of the victim girl, the accused accompanied her. It is submitted that the victim girl was consenting party to the sexual assault allegedly committed by the accused. Learned advocate submitted that the undisputedly on the date of the incident, the victim girl was 16 years and 3 months old and as such she had attained the age of understanding the consequences of her act. Learned advocate, therefore, submitted that only on the ground of the age of the victim, the bail cannot be denied to the accused. Learned advocate submitted that the accused is ready to abide by all conditions that may be imposed by this Court.

5. Learned APP submitted that as far as the alleged sexual assault is concerned, it was against the consent of the victim girl. Learned APP submitted that considering the fact that the victim girl and the accused are residing in the same locality, the possibility of the accused tampering with the prosecution evidence and extending the threats to the victim girl and other witnesses cannot be ruled out.

6. Learned advocate appointed to represent respondent no.2 adopted the submissions made by the learned APP.

7. It is undisputed that on the date of the incident, the age of the victim was 16 years and 3 months. Since the victim girl had not completed 18 years of age on the date of incident, the defence of the consensual sexual act is not available to the accused. However, the material compiled in the charge-sheet is required to be looked into to find out the role played by the victim girl in the entire episode and as such on the basis of her role it would be necessary to decide whether on the date of the incident she had attained the age of understanding the consequences of her act. The victim girl's first statement was recorded by the police. The victim girl's statement under Section 164 of the Criminal Procedure Code, 1973 and the history of assault narrated before the medical officer has

consistently suggest that due to the conduct of the family members of the accused, she was fed up and therefore she decided to commit the suicide. It is further seen that in the process of executing her plan of suicide, she made a phone call to the accused and called him and thereafter they fled together. It has come on record that for one or two days, they were roaming in Thane, and thereafter by railway they went to Kankavali, This conduct clearly indicates that the accused and victim were in relationship. Considering the age of the victim girl and the role played by her in the entire episode at the initial stage clearly indicate that it was her conscious decision to run away with the accused. The materials on record indicate that on the given date, she had attained the age of understanding the consequences of her act.

8. It is true that in her statement, she has consistently stated that when they went to Kankavali, the accused had committed sexual assault by force. In my view, while deciding the bail application, the above stated facts cannot be ignored. The accused is 26 years of age. The accused and the victim girl were residing in the same locality. The parents of accused did not like the relationship of the victim girl with the accused and therefore they opposed the same. The accused has been languishing in jail from

7 February 2022. In my view, even though the defence of consensual act is not available to the accused, in the teeth of the material facts narrated herein above, the bail cannot be denied to the accused. In my view, he is therefore entitled to release on bail. The apprehension of the learned APP can be taken care of by imposing the appropriate conditions.

9. Hence, the following order :-

ORDER

- i. Criminal Bail application is hereby allowed.
- ii. Applicant/accused by name Jayesh Vilas Khandekar, be released on bail on executing PR bond in the sum of Rs.25,000/- with one or two surety in the like amount.
- iii. Applicant/accused is hereby directed not to tamper with prosecution evidence and/or pressurize or threaten or induce prosecution witnesses directly or indirectly.
- iv. Applicant / accused is directed not to contact with informant, witness, her relatives directly or indirectly.
- v. Applicant / accused shall not enter the limits of the Greater Bombay District till the conclusion of the trial, except for purpose of attending the Court date and that too with the prior intimation to the Kudal police station.

[G. A. SANAP, J.]