

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

BAIL APPLICATION NO. 2928 OF 2021

Shivpal Dashrath Harijan

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. S.C.Kewat for the Applicant.

Ms. Rucha Vaidya, Appointed Advocate for the Victim-Respondent No.2.

Mr. Shrikant Yadav, APP for the State.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 16th MARCH, 2023.**

P.C.

1. This is an application for bail filed under Section 439 Cr.P.C. by the aforesaid applicant, who is facing trial in Sessions Case No. 81 of 2021 pending on the file of the learned Special Court of POCSO, Dindoshi, Mumbai. The said case arises from FIR No. 920 of 2020 registered with Charkop Police Station for offences under Section 363, 376, 377, 506 of the Indian Penal Code and Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act.

2. Heard learned Counsel for the Applicant, learned APP for the

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State and learned Counsel for the Victim- Respondent No.2. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by the step mother of the victim. The FIR prima faice reveals that on 7.12.2020 at about 2.00 p.m. the victim had left the house after having a spat with her step mother. She did not return home and her whereabouts could not be ascertained. Hence, a complaint came to be lodged against an unknown person for kidnapping the victim, who at the relevant time was 16 years and 5 months old.

4. Subsequently, the victim was traced and her statement was recorded. The statement of the victim prima facie reveals that she was in love with the Applicant who is presently 20 years of age. She has stated that on 7.12.2020 she had received a phone call from the Applicant calling her at Bhoisar. Accordingly she left the house and met the Applicant. They went to a hotel. She claims that the Applicant had forcible sexual relationship with her under a promise of marriage. She stayed with him till the evening. She states that on the next date while they were at the Boisar Station, her grand

mother saw them and took her home. As the victims father was at village she stayed with her grandmother till 10.12.2020. Upon returning from village, her father took her home on 11.12.2020. She informed her parents about the incident on 11.12.2020. The victim was referred for medical examination. The medical report indicates that there were no external injuries on the genital. The hymen was intact. The medical evidence does not support the charge of sexual intercourse, much less anal intercourse.

5. The Applicant is in custody since 14.12.2020. It is stated that till date charge is not framed. Considering the large pendency of cases, there is no possibility of the trial commencing in immediate future. The Applicant is 20 years young boy. He has no criminal antecedents. Detaining him in custody can turn him into a hardened criminal.

6. Considering the above facts and circumstances, in my considered view this would be a fit case for releasing the applicant on bail. Hence the order:-

- (i) The application is allowed;
- (ii) The applicant who is facing trial in Sessions Case No. 81 of

2021 pending on the file of the learned Special Court of POCSO, Dindoshi, Mumbai, arising from FIR No. 920 of 2020 registered with Charkop Police Station , Mumbai, the Applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two sureties in the like amount;

(iii) The applicant shall report to the Charkop Police Station on the first Monday of every month until further orders;

(iv) The applicant shall not interfere with the complainant or the other witnesses, or tamper with the evidence in any manner;

(v) The Applicant shall keep the Investigating Officer informed of his permanent as well as temporary address, if any, and his contact details, and/or change of residence or mobile details from time to time.

(ANUJA PRABHUDESSAI, J.)