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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3421 OF 2021**

Pradeep H. Paliwal ... Applicant
Vs.
State of Maharashtra & Anr. ... Respondents

Ms. Swarali Joglekar for the Applicant.
Mr. Y. Y. Dabke APP for Respondent No.1-State.
Ms. Rupali S. Akolkar, Advocate Appointed for Respondent No.2.
Mr. Soni Sadashiv Shetty, PSI, Vartak nagar police station present.

CORAM : S. M. MODAK, J.

DATED : 8TH MARCH 2023

P.C:-

1. Heard learned Advocate for the Applicant, learned APP for Respondent No.1-State and learned Advocate for Respondent No.2-complainant.
2. Learned Advocate for the Applicant with all articulation tried to convince me that the Applicant deserves to be released on bail. She relied upon factual aspects, legal aspects and interpretation given by various Courts. The case record reveals that she was minor when the offence was committed.
3. In the FIR lodged by one Rukhsar Wahid Khan, who is sister of the victim, the age of victim is mentioned as 12 years. Whereas, in ossification test carried out, her age is mentioned in between 16 to 17

years. This ossification test was carried out as there are no documentary evidence showing exact date of birth. She also relied upon provisions of Rule 12(3) of Juvenile Justice Rules. In the judgment delivered by the Hon'ble Supreme Court in Criminal Appeal No.219 of 2021, the Hon'ble Supreme Court has compared date of birth contended by the prosecution on one hand and not having supporting documents. In that case benefit of doubt was extended to accused. The conviction was based as victim was below 18 years of age. Whereas, in case of ***Shweta Gulati and Anr. Vs. The State Government of NCT of Delhi***, the High Court of Delhi has opined that there will be margin of error in age as ascertained by radiology examination for two years on either side.

4. To rebut this contention learned Advocate for Respondent No.1 relied upon notification dated 26th October 2007, issued by the Government of India. In that case, the age of victim is to be considered one year on lower side but this notification is applicable only when the age of a juvenile is in conflict with law, has to be considered when the age of victim is under consideration.

5. There is also reliance on the report prepared by TISS on human trafficking. Let us not go into that but concentrate on factual aspect. As per the statement of victim recorded on 18th October 2021, she left house on 27th January 2019 and then stayed with her friend Puja and then went to Indore. With help of certain persons from there, Puja Yadav and Sharda Mangilal, who are other accused persons took her to Rajasthan in the house of present Applicant. They executed deed of adoption by which Santosh, who is brother of the Applicant

took victim in adoption and he gave Rs.50,000/-. Later on, present Applicant married to victim. They stayed at Pune. There is allegation that the Applicant had sexual intercourse with victim. All these things were disclosed when police visited their house.

6. Considering the fact that there is deed of adoption, I agree with learned APP and learned Advocate for Respondent No.1 as to why deed of adoption was executed when victim is major as contended by the Applicant. It shows that victim is minor. It is also surprising, who had given victim in adoption. Even she was told, not to disclose real name. All these facts create suspicion. Santosh has paid Rs.50,000/-. His brother is not arrested. If the Applicant is admitted to bail, it will hamper investigation.

7. At this stage, I am not inclined to grant benefit of error of margin. The circumstances do not warrant grant of such benefit to the Applicant. There is reason to believe that all these circumstances are very suspicious and it is supported by statement of victim. So, no case for grant of bail is made out. Hence, the Bail Application is rejected.

(S. M. MODAK, J.)