

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

BAIL APPLICATION NO. 2460 OF 2022

Vishal @ Aniket Rajesh Sharma

..Applicant

v/s.

The State of Maharashtra .

..Respondent

Mr. Anand Upadhyay a/w. Roli Singh for the Applicant.

Mr. Anil Bansode a/w. Sangita Amrut Sagar for the Intervenor.

Mr. S.V.Gavand, APP for the State.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 3rd MAY, 2023.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Special Case No. 742 of 2022 pending before the Special Judge under POCSO Act, Gr. Bombay.

2. Heard learned Counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The mother of the victim had lodged a report alleging that the

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Applicant herein had kidnapped her daughter. Subsequently, the victim was traced . Her statement prima facie reveals that the Applicant used to visit her house and that he had promises to marry her. She has stated that on 22.4.2022 he had sexual relationship with her and thereafter again on 25.04.2022 and 26.04.2022. The medical report also prima facie supports the case of the prosecution.

4. The material on record, particularly the birth certificate reveals that the date of birth of the victim is 12.11.2005. As on the date of the incident she was 16 years 5 months of age and hence child within the meaning of Section 2(d) of the POCSO Act. Hence, subjecting the victim to sexual intercourse with or without consent is 'rape'. It is also on record that the Applicant is a married man with a child. Hence promise of marriage was apparently false, and was made only to entice the victim and lure her into sexual relationship. The offence is of serious nature. Considering the gravity of the offence, I am not inclined to exercise discretion under Section 439 of Cr.P.C. Hence, the Application is dismissed.

(ANUJA PRABHUDESSAI, J.)

