



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

BAIL APPLICATION NO.2423 OF 2023

RAHUL SHIVAJI KANAGE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. Manisha Devkar a/w Adv. Siddhi Patil for the Applicant.

Ms. Veera Shinde, APP for the State.

Adv. Keral Mehta for respondent No.2.

API Ganesh Chaudhari, Akluj Police Station, District Solapur.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 23, 2023

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.

2. This is an application for bail in respect of the offence punishable under Sections 376, 376(2)(i), 363, 366(A) of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 4, 8 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered on 31.05.2023 vide C.R. No.415 of 2023 with Akluj Police Station, District Solapur.

3. The FIR was registered on 31.05.2023 by the mother of the victim. The victim's statement was recorded on

01.06.2023. At the relevant time of the incident the victim was 13 years and 9 months of age. The applicant at the relevant time was 22 years of age. The applicant was previously married and has a 5 years old child. The applicant's wife however died due to some complications that happened as a result of the appendix operation as per the information supplied by the learned APP on instructions.

4. Learned APP and learned counsel for respondent No.2 opposed the application for bail. It is submitted that the victim being a minor clearly stated in the statement recorded under Section 161 of the Code of Criminal Procedure (hereafter "the Cr.P.C." for short) about forcible sexual intercourse that the applicant had with the victim against her wish. It is submitted that the victim being a minor her consent is immaterial.

5. So far as the accusations are concerned, the victim who is a minor stated that she called up the applicant on 20.05.2023 and told him that the two of them should elope to get married. The applicant accordingly went to the house of the victim. Thereafter they eloped. In the statement of

the victim recorded under Section 161 of the Cr.P.C. it is stated that the applicant had forcible sexual intercourse with her. Thereafter on the basis of the missing complaint the applicant and the victim were traced and the statement of the victim was recorded on 01.06.2023. As mentioned in the medical history, the applicant stated that there was no sexual intercourse of the victim. The statement under Section 164 of the Cr.P.C. was recorded on 03.06.2023. In the statement it is stated by the victim that she knew the applicant since childhood. It is the victim who told the applicant on 20.05.2023 that she wants to stay with him. Thereafter the applicant took her to Pune where he said that they could get married. In the statement recorded under Section 164 of the Cr.P.C. the victim has stated that there was no sexual intercourse which took place between them. Considering the age of the victim her consent even otherwise is immaterial. Prima facie, as the material stands, there is no history of any sexual intercourse by the applicant in the medical history or under Section 164 statement of the victim. The applicant was arrested on

02.06.2023 and is in custody since then. The investigation is complete and the charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. In the facts and circumstances of the present case I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Rahul Shivaji Kange in connection with C.R. No.415 of 2023 registered with Akluj Police Station, District Solapur shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to

the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall attend the trial regularly.

(g) The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall not enter the jurisdiction of the Akulj Police Station where the victim is residing till further orders of the trial Court.

(i) The applicant shall not to contact, threaten or influence the victim.

6. The application is disposed of.

7. I appreciate the valuable assistance rendered by Ms. Keral Mehta, the learned Advocate, who appeared on behalf of respondent No.2 in this proceeding. Learned advocate may be paid the fees as prescribed by the Legal Aid Services Authority or if not prescribed, the same is quantified at Rs.5000/-.

(M. S. KARNIK, J.)