

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

BAIL APPLICATION NO.3697 OF 2021

Reshma Mahesh Gaikwad @
Reshma Mahesh Surose

...Applicant

Versus

The State of Maharashtra and
Anr.

...Respondents

**WITH
BAIL APPLICATION NO.3714 OF 2021**

Ravi Yadav alias Ravi Ganesh
Ram

...Applicant

Versus

The State of Maharashtra and
Anr.

...Respondents

....

Mr. Divesh Mehani with Mr. Kunal Pednekar for the Applicant in
BA/3697/2021.

Mr. Shubham Mhatre i/b. Mr. Samay Pawar for the Applicant in
BA/3714/2021.

Mr. Parth Bhanushali, i/b. Mr. Kunal Shinde for Respondent No.2. in
BA/3714/2021.

Mr. S.V. Gavand, APP for Respondent No.1-State.

Ms Rebecca Gonsalvez, appointed as Amicus Curiae.

Mr. Vitthal Digambar Dabade, PI, Bhore Police Station, Pune(rural)
present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 12th JUNE, 2023.

P.C.:-

1. The Applicants are seeking bail in C.R. No. 72 of 2021 registered with Bhore Police Station, Pune (Rural) for the offences punishable under Sections 323, 342, 363, 366, 370, 370 A, 376(2)(j), (n), 376(4)(3), 506 and 507 r/w 34 of the IPC, Sections 4, 8, 9(l) and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) and Sections 4, 5 and 6 of the Prevention of Immoral Trafficking Act, 1986.

2. The aforesaid crime was registered pursuant to the FIR dated 10/04/2021 lodged by the victim, a girl child born on 19/09/2004. The facts narrated in the FIR reveal that the father of the victim, who is an unemployed alcoholic resides at the native place. Forced to shoulder the responsibility of bringing up two minor daughters, some time in the year 2018, her mother shifted to a rented room in a chawl at Ambewadi and took up a job in a hotel. The victim got acquainted with the co-accused Komal and her husband Sunil and Sapna, who were residing in the same chawl. The co-accused instigated the victim against her mother, and lured and induced the victim to accompany her to Pune. The victim was promised good education and life, instead she was forced into prostitution. The facts narrated in the

FIR and the statement recorded under Section 164 of Cr.PC is nothing but a harrowing and horrendous story of a child of fourteen years, who was trafficked by her neighbour, used and abused by many to satisfy their sexual lust.

3. Learned counsel for the respective Applicants have sought to project the Applicants as innocent, virtuous and unblemished beings, who have been victims of false implication. The Applicant Ravi Yadav also relied upon an affidavit allegedly filed by the victim through her advocate, giving him a clean chit and substantiating his contention of victimisation. The affidavit of the victim was not in consonance with the facts narrated in the FIR. Hence, on 23/08/2022 following order came to be passed:-

“1. xxx

2. I have gone through the FIR. The allegations in the FIR are serious in nature. The victim, who was a minor was subjected to sexual abuse. The records reveal that the victim has filed her affidavit stating that the Applicant in Criminal Bail Application No. 3714 of 2021 is innocent and has been falsely implicated. The affidavit reveals

that she was still a minor as on the date of filing of the affidavit.

3. Considering the seriousness of the accusation, Advocate Ms.Rebecca Gonsalves, is appointed as Amicus Curiae to assist the Court in deciding the application.

4. Registry to furnish copy of the application and the affidavit to the appointed Advocate. Stand over to 30.08.2022.”

4. The facts placed on record by Ms Gonsalvez, following her interaction with the victim, are even more disturbing and exasperating. She brought to the notice of the Court that the Special Court did not apprise the victim of her rights to be represented by a lawyer. As a consequence thereof the victim was not represented by a lawyer and copies of the applications filed by the accused were not served on her. The bail applications were decided without hearing her in the matter. She states that even before this Court in Bail Application No.2985 of 2021 filed by the co-accused the Investigating Officer had informed the APP that the victim had gone to her native place and was not responding to his messages even though she was very much available at the given address and was still going through the trauma of the

incident. In the wake of such assertions, order dated 20/02/2023 came to be passed with following observations and directions:-

- “1. Ms Gonsalvez, learned appointed counsel submits that the victim has informed her that she has not been apprised of her rights to be represented by a lawyer before the Special Court. She submits that, the victim is not represented by any lawyer before the Special Court, copies of the applications filed by the accused in the said case are also not furnished to her and she is not heard in the matter before passing of any order.*
- 2. The POCSO Act and Rules recognize the right of the victim, her parents, complainant/ support persons to participate in the proceedings and to take assistance of a legal practitioner of their choice. The victim is entitled for complete information of the proceedings and its progress at various stages from the time of registration of crime till the rendering of verdict and imposing of the sentence. The issue has been dealt with by the Division Bench of this Court in Public*

Interest Litigation No.5/2021. Copy of the said order dated 8/4/2021 be forwarded to the learned Special Judge, Pune, who is trying the Special Case No.466/2021, with direction to comply with the guidelines laid down by this Court in the said Public Interest Litigation as well as the provisions of the Act and Rules framed thereunder in letter and spirit.

3. *Learned Special Judge to appoint any senior lady Advocate from Legal Aid Panel to represent the victim in Special Case No.466/2021 and further ensure that the victim/guardian is provided a support person to render assistance to the child in all possible manner throughout the trial.*
4. *Learned A.P.P. to verify availability of counsellors within the close vicinity of the residence of the victim.”*

5. It is only pursuant to this order that the victim has been provided with legal aid. Ms Gonsalvez states that considering the limited scope under Section 439 of the Cr.P.C., a petition (Writ Petition

No.1218 of 2023) has been filed on behalf of the victim seeking further investigation, payment of compensation and appointment of Counsellor. No doubt that the right of the victim will be adjudicated and her interest will be protected in the petition filed under Article 226 of the Constitution of India. Nevertheless, the fact remains that the Amicus has been compelled to file a petition to protect the rights of the victim, which are otherwise well recognized under the provisions of the POCSO Act and the Rules framed thereunder. It is to be noted that failure to comply with the mandate of the POCSO Act and the Rules had also led to filing of Public Interest Litigation No.5 of 2021, wherein the Division Bench of this Court issued the following guidelines:-

“20. We are thus of the clear opinion that the POCSO Act read with Rules 4(13) and 4(15) of the POCSO Rules recognize a statutory entitlement to the assistance of and representation by legal counsel for the family or the guardian of the child and entitlement to be present and to participate in proceedings in accordance with the said provision. As a necessary corollary, there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled on such

applications at the various stages of the proceedings. We are accordingly inclined to dispose of the petition with the following directions:-

(i) Notwithstanding the duty of the SJPU to intimate the child's family or guardian or the legal counsel under Rule 4 of the POCSO Rules:-

a. where an application is made before the Court on behalf of the prosecution, it shall be the duty of the office of the public prosecutor to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings;

b. when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family or as the case

may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings.

(ii) When an application is made on behalf of the prosecution, it shall be the duty of the Police Officer to confirm to the relevant Court that service of such application along with all relevant documents and the record necessary for effective participation in the proceedings, and the notice of hearing has been undertaken and completed along with proof of service.

(iii) In the event, it has not been possible to serve the child's family, guardian or legal counsel, it shall be the duty of the SJPU to inform the reasons in writing to the relevant court.

(iv) The appropriate Court, before proceeding to hear the application, shall ascertain the status of service of notice, and if it is found that notice has not been issued, the Court may make such reasoned order as it deems fit to

secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the child's family or guardian or legal counsel.

(v) In the event despite issuance of notice, the child's family, guardian or legal counsel, does not attend the hearing, the Court may proceed further without the presence of such noticee, or issue afresh notice, as the Court may deem fit and proper, considering the interest of justice.

(vi) When the proceedings under the Act would also relate to an offence against Sections 376(3), 376-AB, 376-DA or 376-DB of the Indian Penal Code, the notice to the victim shall be issued under Section 439(1-A) read with Rule 4(13) and 4(15).

(vii) This order shall be brought to the notice of all the Sessions Judges and Special Court Judges in the State of Maharashtra."

6. It is disturbing that the Investigating as well as prosecuting

agency and the Special Court have totally disregarded the relevant provisions of the POCSO Act as well as the directions given by the Division Bench of this Court in Writ Petition No.1218 of 2023. Suffice to say that the POCSO Act has been enacted with an avowed object to protect the children from sexual offences with due regard to safeguarding interest and well being of children. To achieve the object, the Act provides stringent punishment, graded as per the gravity of the offence and casts legal obligation for reporting the offence under the POCSO Act, with penal provision for non-reporting. The object of the Act can only be achieved by strict compliance of the relevant provisions by all the concerned stake holders failing which the legislation will only be an illusion, offering no hope to the victim of the crime.

7. In the instant case, all the stakeholders including the Special Judge have acted in most casual and insensitive manner in denying the victim of her right to participate and right of being heard at bail hearings. Such approach in negating the right of the victim of representation and other support system as noted above, is violative of the mandate under the POCSO Act and will certainly render nugatory the advances made by the legislation in upholding the best interest of

the child. Such casual approach therefore needs to be deprecated and viewed seriously.

8. Now coming to the affidavit of the victim Mr. Parth Bhanushali, who is allegedly representing the victim has placed on record affidavit, wherein the victim has allegedly given a complete clean chit to the Applicant-Ravi Yadav. The records indicate that the victim was not even served with the notice of the application. Hence, it prima facie appears that this affidavit is filed at the behest of the Applicant. From the statement made by the Amicus it is further evident that the victim was not even aware of pendency of such proceedings as to give a clean chit to the Applicant. These facts cast a doubt on the veracity and genuineness of the affidavit. Hence, the question whether the victim had indeed signed the affidavit, if so at whose behest and under what circumstances needs to be ascertained. Similarly, veracity of the statement made by the Investigating Officer in Bail Application No.2985 of 2021 that the victim had gone to her native place in Uttar Pradesh and was not responding to him also needs to be tested.

9. As regards the merits of the application, the FIR as well as

the statement of the victim under Section 164 of the Cr.P.C. prima facie reveals that a day after taking the victim to Pune, the co-accused Komal took the victim to the house of the Applicant-Reshma. The victim states that the co-accused Komal and the Applicant -Reshma took her to a lodge. They made her sit in a room and sometime later a middle aged man came to the said room. He disrobed her and had forcible sexual intercourse with her. When she ran out of the room she saw the Applicant-Reshma and the co-accused waiting outside the room. She saw them accepting money from the said person. The statement of the victim prima facie proves involvement of the Applicant.

10. It is not necessary to get into gory details narrated by the victim. Nevertheless, the records prima facie reveal that the Applicant-Reshma and others were involved in trafficking the victim for commercial sexual exploitation. The victim was under their control and her efforts to escape were foiled. The victim, a young girl of fourteen years was sexually abused and exploited by many through the years and she was used as the source of income by the Applicant-Reshma and the co-accused.

11. The victim has named the Applicant-Ravi Yadav and has stated that he had sexually abused her by paying money to the co-accused Komal. The records prima facie reveal that this Applicant had sexual intercourse with this minor girl under the pretext of marriage. In fact, the statement of the victim reveals that the co-accused Komal had promised to get her married to the Applicant-Ravi Yadav since he would pay to her a large amount. The records indicate that promise of marriage was only a strategy adopted by the Applicant and the co-accused to lure her in entering into a physical relationship.

12. The material on record reveals that the Applicants are involved in child trafficking and subjecting a child of 14 years to physical, emotional and sexual abuse and exploitation. The offence is of serious nature. Furthermore, the Applicant-Ravi Yadav, approached the victim and procured a favourable affidavit. Hence, apart from the gravity of the offence, the conduct of the Applicant would also not justify grant of bail as the possibility of the Applicant influencing the victim or interfering with her and or thwarting the course of justice cannot be ruled out.

13. Hence, the following order:-

- (i) The Applications are dismissed.
- (ii) Learned Principal District and Sessions Judge, Pune, shall enquire whether the victim had signed the affidavit giving clean chit to the Applicant-Ravi Yadav. If so, the person at whose behest and the circumstances under which it was signed.
- (iii) Learned Principal District and Sessions Judge, Pune, shall also enquire whether the victim had gone to her native place and had not responded to the messages of the Investigating Officer.
- (iv) Registrar (Judicial-I) to forward copy of the affidavit of the victim dated 08/02/2022 filed before this Court and copy of order dated 18/11/2021 in Bail Application No.2985 of 2021 to the Principal District and Sessions Judge, Pune.

(v) The inquiry shall be concluded within six weeks from the date of receipt of the order and report shall be forwarded to this Court within one week thereafter.

(vi) Matter be listed for compliance within one week from the date of receipt of the report.

14. This Court acknowledges and appreciates the valuable assistance rendered by learned Amicus Curiae -Ms Rebecca Gonsalves, who has painstakingly espoused the cause of the victim and assisted her in getting compensation under the Manodhairya Scheme.

(SMT. ANUJA PRABHUDESSAI, J.)