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

CRIMINAL BAIL APPLICATION NO. 2740 OF 2022

Rohit @ Ronnie Ashok Parmetkar
Age : 26 Years, Occu. Tattoo Artist,
R/o. Room No.301, Varsha Palace Society,
3rd Floor, Near Kalwa Super Market
Kharogaon, Kalwa, Thane. ...Applicant

vs.

1. The State of Maharashtra
[At the instance of Kalwa Police
Station in C.R. No. I-0371 of 2021]
2. XYZ
R/a : Runwal Nagar, Shivsena Shakha,
Opp. Siddhivanayak Tower, Service Road,
Rabodi – Thane. ...Respondents

Mr.Harshad Sathe a/w Mr.Saurabh Butala, Advocate for Applicant.
Mr.Y.Y.Dabke – APP for the Respondent No.1-State.
Ms.Ilsa Shaikh – Appointed Advocate for Respondent No.2.

CORAM : S. M. MODAK, J.
DATE : 31st MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant, learned APP for the Respondent No.1-State and learned Advocate for Respondent No.2 – First Informant – Victim. She is appointed by this Court.
2. The Applicant is behind bar since October-2021, facing allegations of having sexual intercourse with the First-Informant and

abusing her and harassing her sexually. That is why, the provisions of Section 376 of the Indian Penal Code, 1860 [“IPC”] and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”] were invoked.

3. The victim is aged about 17 years and her date of birth is 6th August 2004. The bonafide certificate is on Page No.25 mentioning the same date of birth. Considering the fact that she was about to attain majority, on the basis of available materials and considering the available materials, it is alternatively submitted that this is a case of consensual intercourse.

4. When the victim is about to attain the majority, in such a scenario, how this Court has to dealt with the Bail Applications is elaborated in following two orders :-

(i) Anirudha Radheshyam Yadav V/s. The State of Maharashtra¹

(ii) Faizan Wahid Baig V/s. The State of Maharashtra²

5. Both the sides have invited my attention to the various materials in order to support their contentions that the case of consensual intercourse can be inferred or in support of the contention that this is a case of forcible sexual intercourse.

6. The incident took place on 20th October, 2021. She went to the

1 Cri.Bail Appl.No.2632 of 2019 : 9th January, 2020 : Bombay High Court

2 Bail Appl.No.3372 of 2021 : 15th November, 2021 : Bombay High Court

house of the Applicant on the pretext of having a tattoo. She was accompanied by her sister. They initially sat in bed-room. The Applicant drawn a tattoo on the shoulder of the First-Informant. At that time, he asked her sister to sit in a hall. Then, he closed the door and thereafter, the incident of intercourse took place.

7. The statement of the sister is recorded. She has said that she tried to knock the door. After some time, First-Informant came out of the room and she was crying. There is a medical certificate of the victim. It is true that doctor has opined about pinovazina intercourse. The observations therein were referred by both the sides. According to the learned Advocate for the Applicant, there are no other injuries on the body and it is submitted that there were old tear of hymen.

8. The victim was about to marry after attaining 18 years and there is a statement of the boy. It is submitted that the FIR is lodged after a gap of 5 days. There is an argument made that after reading the FIR, it can be said that both were in love with each other, whereas, it is contended on behalf of the First-Informant and said that this is not a case of love affair but it can be at the most said to be a case of friendship.

9. After reading her statement, she has nowhere stated that she is

in love with the Applicant. It can only be said that they were knowing each other and they were friends. It is true that they have met each other and also visited mall prior to start of the lockdown. This incident took place after normal life is restored after lifting of lock down.

10. It is also true that her sister accompanied her and for some time she was with her but at the material time, she was asked to sit in the hall and incident took place in the bed-room. It is important to note that door was closed and the sister was outside. No doubt, she has tried to knock the door. No doubt, there is evidence of the intercourse. But, the circumstances referred above i.e. to say the incident took place when the sister was very much there in the hall and there are no other injuries on the body, it can be said that the victim has not opposed to the act of sexual intercourse by the Applicant. It is true that considering the facts and circumstances of the case, this Court in above referred orders, have granted bail even though the victim has not attained the age of majority. No doubt, he is also of a young age. He has remained in jail for one and half years. So, he is entitled to be released on bail. Hence, following order :-

ORDER

- (i) Application is allowed.

- (ii) Applicant Rohit @ Ronnie Ashok Parmetkar be released on bail in connection with C.R. No. 371 of 2021 registered at Kalwa Police Station – Thane on furnishing personal bond and surety bond of Rs.25,000/-.
- (iii) Applicant to give attendance to Kalwa Police Station on first Monday of every month from 10.00 to 12.00 noon for one year.
- (iv) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
- (v) In case of breach of any of the conditions, bail of the Applicant is liable to be cancelled after notice.

11. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

12. Application is disposed of in the aforesaid terms.

13. Office to pay fees to learned Advocate appointed for Respondent No.2.

14. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]