



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

BAIL APPLICATION NO.2797 OF 2023

BHUSHAN BABARAM KAJARE
VS.
THE STATE OF MAHARASHTRA

..APPLICANT
..RESPONDENT

Mr. Ankit R. Upadhyay, for the applicant.
Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 29, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 376(2)(n), 452, 323, 506 of the Indian Penal Code, 1860, under sections 6, 10, 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO', for short) registered on 21/11/2022 vide C.R. No. 730 of 2022 with Tulinj Police Station, Vasai. The applicant is arrested on 22/11/2022.
- 3.** The applicant at the relevant time was 27 years of age and the victim was 16.5 years of age. The statement of the victim under

section 161 of Code of Criminal Procedure ('CrPC', for short) was recorded on 21/11/2022. The date of the incident is 02/09/2022 and thereafter. Learned counsel for the applicant submitted that the relationship between the applicant and the victim is consensual in nature. Relying on the decision of this Court in the case of ¹**Ashik Ramjaii Ansari Vs. State of Maharashtra and anr.**, especially paragraph 54, it is submitted that the victim is 16.5 years of age and was mature enough to consent. Reliance is also placed on the decision of this Court in the case of ²**Panchshil Vs. State of Maharashtra and anr.** to submit that in the present case also the victim could have very well sought help from the neighbours by raising shouts as she was residing in a flat. The submission of learned counsel for the applicant is that the victim did not raise any protest and therefore the act is consensual in nature. I am afraid that the decisions relied upon by learned counsel for the applicant are after the evidence was adduced and post trial. So far as the decision in **Ashik Ramjaii Ansari** is concerned, this Court had in the facts of the case come to the conclusion that the act was consensual in nature and the victim was competent to give her consent. In the facts of that case, the evidence on record clearly made out a case for consensual

1 3 Bom CR (Cri) 322

2 3 AIR Bom R 53

sex, as no where in the examination-in-chief or her cross-examination, the prosecutrix has alleged that sexual intercourse was forcible and without her consent. The facts are altogether different than that of the present case, in any case, I am considering an application for bail.

4. I have perused the statements under section 161 and under section 164 of CrPC. At this prima facie stage, it is difficult for this Court to even prima facie come to a conclusion whether relationship was consensual in nature having regard to the nature of accusations. Considering the age of the applicant and that of the victim and the manner in which the incident is narrated in the section 161 and section 164 statements, I am prima facie of the opinion, that this is not a fit case to exercise any discretion in favour of the applicant. I do not find any substance in this application. The application is rejected.

5. The observations made are prima facie for considering the bail application. The trial Court not to be influenced by the observations made in this order.

6. The trial Court to record the evidence of the child witness as expeditiously as possible in terms of the section 35(1) of the POCSO

Act. Liberty to apply for bail after the evidence of child witness is recorded.

(M. S. KARNIK, J.)