

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3279 OF 2022

Hemant @ Sonu Gurunath Chavan ...Applicant

vs.

State of Maharashtra and Anr. ...Respondents

Mr.Subhash Jha a/w Ms.Shraddha Katawaa i/b. Law Global
Advocates for Applicant.

Mr.H.J.Dedhia – APP for Respondent No.1 – State.

Mr.Pranot Pawar i/b. Mr.Shashikant P. Chaudhari – Appointed
Advocate through HCLSC for Respondent No.2.

CORAM : S. M. MODAK, J.

DATED : 18TH JULY 2023

P.C. :

1. I have already heard learned Advocate Shri.Jha for the
Applicant, learned Advocate Shri.Chaudhari for the First-Informant
and learned APP.

2. The matter is kept today for hearing Mr.Jha on the point of any
judgment in respect of error of margin in respect of age. He relied
upon one judgment in *Jaya Mala V/s. Home Secretary, Government
of Jammu & Kashmir and Others*¹. That was a Petition for quashing

¹ (1982) 2 Supreme Court Cases 538

the detention order. Para No.9 says that there can be a margin of error for two years on either side. This observation is made considering the anatomical changes in the structure of the body. Because, growing in age day by day is an involuntary process.

3. Learned Advocate Mr.Jha tried his level best to convince me that this case cannot be considered as a case involving unilateral act of sexual intercourse. According to him, if an act of sexual intercourse is committed, on more than more occasion, there are two inferences. One is the girl was fully aware about the act and consequences and second, the grievance of threatening is ruled out.

4. I have gone through the papers submitted along with the charge-sheet. The FIR is filed by the mother of the victim on 1st March, 2019. It is on the basis of an information narrated to her by the victim on 27th February, 2019. She was having a grievance of stomach pain and hence, she has narrated the incident that took place on 26th February, 2019. When the victim had gone to the house of the Applicant for the purpose of handing over delivery of iron cloths, the Applicant has taken disadvantage and ravished her. On that basis, the FIR came to be lodged with Narpoli Police Station on 1st March, 2019 under Sections 376(2)(i) of Indian Penal Code, 1860

["IPC"] and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 ["POCSO Act"].

5. During supplementary statement, the mother of the victim has disclosed few more facts. It is also on the basis of facts disclosed by the victim to her. She was also ravished on more than one occasion. It was in the month of October-2018, in the month of December-2018 and thereafter. When after FIR, she was medically examined, she was found to be carrying 17 weeks, 4 days pregnancy. Sonography was also performed.

6. Learned Advocate Mr.Jha invited my attention to the answers given by the victim in a statement recorded in question and answer form. On one occasion, the victim replied that after the incident of sexual intercourse, she has realized that there was a bleeding and she felt that it is similar to the bleeding which occur during menstrual course. The contention is that the victim has attained the age of puberty.

7. It is true that the co-accused Ankur is granted bail by the Court of Additional Sessions Judge – Thane. According to the Prosecution, his role and role of the present Applicant is different. I accept the said contention. The allegation against the present Applicant is about

the act of sexual intercourse on more than one occasion.

8. Much is said about the age of the victim. My attention is invited to the following documents :-

- (a) The bonafide certificate mentioning the date of birth of the victim as 11th July, 2007 (Page No.48).
- (b) A statement of the victim mentioning her age as 11 years. (Page No.49).
- (c) The case papers mentioning about x-ray of elbow and knee joint. The opinion is 12 to 14 years.

9. Whereas, according to learned APP when there is authenticated document about the age of the victim, this opinion evidence need not be considered. It is true that the bonafide certificate is available on record.

10. What should be the approach of the Court in such kind of cases was observed by this Court in various judgments. Reliance is placed on following judgments :-

- (i) Imran Iqbal Shaikh V/s. The State of Maharashtra and Anr.²
- (ii) Faizan Wahid Baig V/s. The State of Maharashtra³
- (iii) Sujal Dinkar Vaidya V/s. The State of Maharashtra and Anr.⁴
- (iv) Balaji Keshav Junne V/s. The State of Maharashtra and Anr.⁵

² Bail Application No. 997 of 2022 : 26th April, 2023 : Bombay High Court

³ MANU/MHOR/62774/2022

⁴ Bail Application No. 1712 of 2022 : 21st April, 2023 : Bombay High Court

⁵ Bail Application No. 646 of 2023 : 26th April, 2023 : Bombay High Court (Aurangabad Bench)

11. It is true that in those orders, learned Single Judge of this Court was pleased to grant bail to the Accused who is facing allegations of Section 376 of IPC. In those cases, the girl is of 15 years and above 17 years and above. Even though in some of those cases, the girl was minor, the Court has considered the fact that she has joined the company of the Accused voluntarily.

12. Those observations are on the basis of facts of that case. In this case, the girl is belonging to downtrodden strata of the society. Her mother is doing labour work. Even though it may be true that the Applicant is aged about 22 years only, learned APP is right that the offence is punishable with imprisonment which may extend to life. It is true that the First-Informant has stated that the victim has visited those places on more than one occasion, but considering the fact that the age of the victim is not of such kind that she can be said to be aware about the nature of the act and its consequences. At this stage, I am not inclined to accept the contention of Mr.Jha and grant him bail.

13. There is further contention raised that the Applicant is behind bar since 2019 and in many of the matters, the Hon'ble Supreme Court has granted bail on the ground of delay in trial even by lifting

a ban as per the particular Sections of the Special Act. Learned APP submitted that punishment is upto life and it is possible that the Applicant will run away cannot be ruled out. At the same time, it is true that if the Applicant is granted bail, we have to consider from the perspective of the victim and they are knowing each other. So, today I am not inclined to grant benefit about not staring with the trial. Let the trial Court to record the evidence of the victim. As on today, charge is not framed. So, necessary directions can be issued to the trial Court.

14. In view of that, following order is passed :-

O R D E R

- (i) The trial Court seized of the matter is directed to frame charge as early as possible if it is not framed.
- (ii) The trial Court is directed to record first the evidence of the victim on top priority basis.
- (iii) Let this be done within a period of six months from the date of receipt of the said order.
- (iv) The Applicant is at liberty to apply again before this Court considering the progress of the trial.

15. With these observations, Application is disposed of.

16. Learned Advocate for the First-Informant be paid fees as per the Rules.

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

[S. M. MODAK, J.]