

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

BAIL APPLICATION NO.3771 OF 2022

Basan Motikant Mishra

...Applicant

Versus

The State of Maharashtra and
Anr.

...Respondents

....

Mr. Prashant Pandey with Mr. Dinesh Jadhvani, Mr. Irfan Unawala,
Mr. Ashish Jain, Dipsy Sequieria i/b. M/s. W3Legal for the Applicant.
Mr. H.J. Dedhia, APP for Respondent No.1-State.
Ms Mahenoor Khan i/b. Ms Vrushali Maindad for the Respondent
No.2.

CORAM: G.A. SANAP, J.

DATED: 28th NOVEMBER, 2023.

P.C.:-

1. The Applicant-accused has made this application for bail in Crime No.1050 of 2020 (POCSO Special Case No.254 of 2021) for the offences punishable under Sections 354-D, 376, 504 and 506 of the Indian Penal Code, 1860 and under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012.

2. The learned advocate for the Applicant-accused submitted that the victim girl has attained the age of understanding.

It is further submitted that relationship between the accused and the

victim was consensual. The learned Advocate took me through the records and pointed out that due to the instigation and pressure of the mother of the victim, false FIR was lodged against the accused. The learned Advocate further submitted that even after lodging the FIR, the victim girl was in a constant contact on phone with the accused. The learned Advocate further submitted that the facts stated in the FIR and the facts narrated before the Medical Officer at the time of examination are self contradictory. The learned Advocate submitted that there was a delay of 16 months in lodging the report. It is further submitted that there is no progress in the trial after filing the charge-sheet. According to the learned Advocate, the trial may not get over in the near future and therefore further incarceration of the accused is not warranted.

3. Learned APP submitted that the as far as the sexual assault is concerned, the version of the victim is consistent. Learned APP pointed out that when the victim refused to maintain the relations with the accused, the accused had threatened the victim to make her obscene photographs viral on social media. It is submitted that all these facts have been stated by the victim consistently. The

learned APP submitted that since the victim was 17 years two months old at the time of the incident, the defence of consensual act cannot be invoked. Learned APP further submitted that if the accused is enlarged on bail then possibility of the accused tampering with the prosecution is evidence as well as the extending threats to the victim and the witnesses cannot be ruled out.

4. Ms Mahenoor Khan, learned Advocate holding for appointed Advocate Ms Vrushali Maindad for the victim has adopted the submissions advanced by the learned APP.

5. I have perused the FIR and the other material placed on record. It is undisputed that the charge-sheet has been filed. Despite filing the charge-sheet, the charges have not been framed. It appears from perusal of the order passed by the learned Special Judge dated 15/09/2022 that the accused has been insisting for his production before the Court and expeditious hearing of the trial. It appears that for some reason or the other the learned Trial Judge has failed to frame the charge and disposed of the matter expeditiously.

6. The learned Advocate for the accused on the basis of the

available material contended that the case of the prosecution is resting on a weak foundation and therefore further incarceration of the accused is not warranted. Learned Advocate submitted that in North Indian communities marriages are celebrated even before attaining the age of majority.

7. It is necessary to emphasise that at the stage of deciding the bail application, the merits of the matter and credibility of the available evidence cannot be gone into. It is not permissible under law. The factors required to be considered at the stage of deciding bail application are - serious nature of crime, the dominant position of the accused, the position of the victim and the witnesses and other related circumstances. The victim has categorically stated that the accused had threatened her to make her obscene photographs viral on the social media if she did not succumb to his desire and wish. This statement has been made consistently by the victim. It is true that at the time of medical examination, the victim had stated that they were in relationship. However, in the later part of the medical history she has stated that she was threatened by the accused and subjected to sexual assault. The victim in her statement recorded

under Section 164 of the Cr.P.C. has reiterated the facts narrated in the FIR. In my view considering the fact that the victim is a minor and the accused being in a dominant position, prayer for bail cannot be granted. The crime committed is a serious crime. In the teeth of the material on record, no case has been made out for bail.

8. It is necessary to state that there is no satisfactory progress in the trial at the behest of the learned Trial Judge. This aspect can be taken care of by issuing appropriate directions to the learned Judge. On this count alone the accused cannot be released on bail. Hence, the following order:-

- (i) The application is rejected.
- (ii) The learned Judge of the Trial Court to dispose of the matter expeditiously and in any case within a period of six months from today.

(G.A. SANAP, J.)