

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPLICATION (BA) NO. 335/2023

Monal s/o Rajendra Meshram

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Jaripatka, Dist.Nagpur and another

.. Respondent/s

.....
Mr. S.S. Meshram, Adv. for the applicant

Mr.I.J. Damle, APP for Respondent No.1

Ms. Akshaya Kshirsagar, Adv.(appointed) for Respondent No.2

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CORAM: ANIL L. PANSARE, J.

DATED : 27th April, 2023.

PC:

Heard. Reply filed on behalf of the Respondent No.1-State is taken on record.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 4th March, 2023 in Crime No.157/2023 registered with Police Station, Jaripatka, Nagpur, for the offences punishable under Sections 376(2)(n), 323, 504 of the Indian Penal Code and Sections 4,6,8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act").

3. Having heard both the sides and having gone through the case diary and relevant papers on record, it appears that the victim was aged 17-years. The victim and the applicant got acquainted with each other some time in June, 2020. The victim herself proposed the applicant. They had consensual sexual relationship. The relationship

continued unabated till February 2023. In the meantime, the victim started residing with the applicant. On 28.02.2023 the applicant wanted to go out for work, but the victim restrained him. As a result, there occurred a quarrel between them. The applicant, enraged by restraint, abused and assaulted the victim by fists and blows. Thereafter, the victim came back to her parents' house and lodged the report.

4. The learned APP so also the learned counsel for the respondent no.2-victim have opposed the application on the ground that the victim is a child as defined under the POCSO Act and that therefore, the consent will be immaterial.

5. However, for the purpose of bail, the learned counsel for the applicant has correctly argued that the relationship continued for substantial period and that the victim was of the age where she could be said to have attained sexually maturity and was knowing the consequences of the Act.

6. In this regard, an useful reference can be made to the judgment reported in **2016 ALL MR (Cri) 1712 (Sunil Mahadev Patil vs. The State of Maharashtra)**, particularly para 11, which reads thus:-

“11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the

child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

7. The instant case appears to be no exception. It is nobody's case that the applicant has taken advantage of the age of the victim and has exploited her. Furthermore, the learned Sessions Court has noted in its order that the victim has in her say filed before the Sessions Court, has given 'no objection' for releasing the applicant on bail.

8. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

9. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given addresses since long.

10. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

11. Resultantly, following order is passed :-

ORDER

- (i) The application is allowed.
- (ii) Applicant – Monal s/o Rajendra Meshram, be released on bail in Crime No.157/2023 registered with Police Station, Jaripatka, Nagpur for the offences punishable under Sections 376(2)(n), 323, 504 of the Indian Penal Code and Sections 4,6,8 and 10 of the Protection of Children from Sexual Offences Act, 2012, on he executing P.R. Bond in the sum of Rs.25,000/-, with one surety in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (v) The applicant shall not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- (vi) The applicant shall maintain law and order.
- (vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The professional fees of Ms.Akshaya Kshirsagar, learned Advocate (appointed) for Respondent No.2, be quantified and paid as per the Rules.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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