



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 BAIL APPLICATION NO. 288 OF 2024

Pratik Pravin Sathe

..APPLICANT

-VERUS-

1. The State of Maharashtra

2. XYZ

..RESPONDENTS

...
Advocate for Applicant : Mr. Karale Patil Sattyajeet S.
APP for Respondent/State : Mr.M.K. Goyanka
Advocate for Respondent no.2 : Ms.Neeta Mirajkar(appointed)

.....
CORAM : SANJAY A. DESHMUKH, J.
DATED : 2nd APRIL, 2024.

PER COURT :-

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.467 of 2023 registered with Supa Police Station, Dist. Ahmedangar, for the offences punishable under sections 376(3), 354-D(2), 328 of the Indian Penal Code, 1860 (For short, "IPC") and sections 4, 8 and 12 of the Prevention of Children from Sexual Offences Act, 2012 (For short, "the POCSO Act").

2. Informant-17 years old girl averred in the report that she was residing in Ahmednagar city in a rented room for her education. On 02.04.2023, there was birthday of her friend, therefore, she came to Punewadi for attending it. After 2-3 days of birthday sister of her friend made phone call to her and told her that the applicant is willing to develop friendship with her. She flatly refused that proposal and told her that she is concentrating on her study. Thereafter, she cut the phone call of this applicant. The applicant was talking from the same phone by conference call. Thereafter she got phone call from unknown mobile phone no.7588975817. When she asked as to who he is, he replied that he was the applicant. Again he put proposal then she switched off phone and it was kept in the blacklist. 15 days thereafter, again she got phone call from mobile phone no.9699041469. That person told her that he is Vivek Rathod. He is a friend of applicant. He told that the applicant has consumed poison. He questioned her as to what is difficulty to her to accept his friendship and told that because of her, his life is spoiling. He again requested her to accept the friendship of the applicant and told her to remove his phone number from blacklist, otherwise, he will die. The informant was frightened. She removed his phone number from blacklist. On 2nd day, she got phone call of this applicant. That time he told her that he has to develop friendship with her.

3. The applicant was frequently making phone call to her but she was not talking more with him. When applicant tried to call in order to convince her frequently, she blacklisted his phone number. Thereafter, after completion of her examination in the summer vacation, she went to Wagholi to stay with her maternal uncle. In July, 2023, the informant joined the college. She was residing in the rented room at Ahmednagar. She got phone call from unknown phone. That person requested her to unblock the mobile phone number of the applicant. She felt that the applicant might have changed his attitude and she unblocked mobile phone number of applicant.

4. In the month of August, 2023 at about 1.30 p.m. when the informant was proceeding to her room, the applicant came to her with Ertiga Car. That time one unknown person was with him. The applicant requested her to come with him outside. She refused but the applicant was not ready to go outside of that room, therefore, she went to convince him to go from that area. Thereafter, the applicant requested her to come for lunch. Therefore, the informant along with her friend Rutuja become ready to go with him. The applicant took them to Chandbibi Mahal hotel. Thereafter that unknown person Vivek Rathod took some group photographs of them. Thereafter, after 6-7 days the applicant started to blackmail her and said that from the group photographs snapped at Chandbibi Mahal, he has

created some photographs of the informant and him. He sent those photographs to her and threatened that he will send those photographs to her father and will viral it. He went to medical shop of father of informant. Informant was not responding him. However, he was frequently calling her and threatening her. Due to those threats informant gave consent to talk with her. Thereafter the applicant was calling her frequently for visit. He used to come to her room frequently and used to close the door.

5. On 24.09.2024, at about 10.00 a.m., informant was proceeding to her native place, that time the applicant made phone call to her and requested her to come at stop at Supa. She stopped at Supa S.T. stand. The applicant came there with Ertiga Car at about 11.30 a.m. He brought Pulao (rice) with him. When both were proceeding by a Car towards Parner, he took her to windmill near Shahjanpur. She ate that Pulao. After eating that Pulao, she felt dizziness. The applicant committed forcible sexual intercourse with her in a Car. Because of dizziness, she became unconscious and due to which she was unable to resist him. When she regained consciousness on 2nd day of the incident, the applicant dropped her to her room. That time informant asked her, as to how she suffered dizziness. The applicant told her that the applicant has mixed some stupefying substance in that Pulao. Therefore, she became unconscious and thereafter, the applicant has committed sexual

intercourse with her. Thereafter, also the applicant was trying to have sexual intercourse with her. Informant was refusing for it. However, he was continuously trying to visit her. Therefore, the informant decided to leave that room. She told her parents that she is leaving that room. When she came to her parents at the time of Navratri holidays, she told that incident of sexual assault to her parents and about leaving of that room. Her parents met the applicant and told him not to meet informant and not to keep any relationship with her. Thereafter he deleted photographs from the computer of his Photo Studio and his mobile phone. Thereafter, he did not make any phone call to the informant. After Dasara festival, the applicant went to her school and shown the edited photographs to her practical partner Prem Ashok Pavai and other classmates. The informant lodged the report on 14.11.2023. The applicant was arrested on 15.11.2023.

6. The learned advocate for the applicant submitted that it is case of love affair. He pointed out some photographs which show that the applicant and informant were in happy mood. He further pointed out the WhatsApp chatting and submitted that once the informant sent message that even if there is strong opposition then also they will marry with each other. According to the applicant, it is a case of pure love and now it is alleged that the applicant harassed her. The learned advocate for the applicant further submitted that the applicant had no criminal antecedents. There is no medical evidence

of alleged sexual assault. The applicant has roots in the society. He will not flee away from the trial. Trial will take long period.

7. The learned advocate for the applicant further pointed out that the informant requested the applicant to deposit Rs.11,000/- and Rs.4,000/-, which appears from the chatting dated 12.11.2023. The learned advocate for the applicant submitted that the applicant belongs to Scheduled Caste and the informant belongs to open category, and therefore, there was opposition to their marriage and that is the reason for lodging the report. The learned advocate for the applicant further submitted that it is surprising to note that a report was not lodged by the parents of the informant when she was missing for two days. The applicant is 19 years old and he has no criminal antecedents, therefore, the learned advocate for the applicant lastly prayed to allow the application.

8. The learned advocate for the applicant is relying upon the authority in the case of ***Imran Iqbal Shaikh Vs. The State of Maharashtra and another in Bail Application No.997 of 2022, decided on 26th April, 2023.*** Para no.4 of it reads as under :-

"4. It is true that the victim is a child within the meaning of section 2(d) of the POCSO Act. The Applicant was also a young boy of 22 years of age at the time of the incident. The statement of the first informant prima facie indicates that the relationship was consensual. It needs to be noted that the POCSO Act has been enacted to protect children from offences of sexual assault, sexual harassment etc., and contains stringent penal provisions as to

safe guard the interest and the well being of the children. The object is certainly not to punish minors in romantic or consensual relationship and brand them as criminals.”

9. The learned advocate for the applicant also relying upon the authority in the case of ***Vishal S/o Omprakash Verma Vs. The State of Maharashtra and another*** reported in ***2021 All MR (Cri) 187***. The paras 11 to 13 of it read as under :-

“11. This Court in the case of Sunil Mahadev Patil vs. State of Maharashtra (supra) has observed thus: "9. In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous. Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail. 10. The offence of rape can be distinguished on the basis of the intention of the accused. There are incidents of rapes committed by gang like the case of Nirbhaya or Maya Thagi or Mathura which cannot be forgotten by Indian Society. So also rape committed in a savage manner or repeatedly by a single accused. There are some instances of rape which take place as a man wants to satisfy his lust and animal within him overpowers his reason. There are instances of rape where a man and a woman both are in love with each other

and get involved into sexual relationship due to either physical or psychological need and in such type of rape, there is no violence which exists in other types of rape. 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 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. 12. The overall considerations while deciding such applications can be summed up as- When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered: (i) What is the age of the prosecutrix, who is minor. (ii) Whether the act is violent or not. (iii) Whether there are antecedents or not. (iv) Whether the offender is capable of repeating the Act or not. (v) Whether there is likelihood of threats or intimidation, if at all the boy is released. (vi) Whether any

chance of tampering with the material witnesses when their statements are recorded. (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.

12. In the present matter, the victim is 15 years old girl, and in her statement, she has admitted that she had love affair with the appellant. The FIR and the statement of the respondent No.2 shows that there was a consensual relations between the respondent No.2 and the appellant.

13. As far as, the promise of marriage is concerned, the Hon'ble the Supreme Court of India in the case of Pramod Suryabhan Pawar Vs. State of Maharashtra and another reported in 2019 (9) SCC 608, has observed that the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

10. The learned advocate for the applicant is further relying upon the authority in the case of ***Sunil Mahadev Patil Vs The State of Maharashtra*** reported in ***2016 All MR (Cri) 1712***. The para 11 of it read as under :-

"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.”

11. The learned APP for the respondent – State and learned advocate for respondent no.2 strongly opposed the application and submitted that the applicant has committed serious offence under Special Act i.e. POSCO Act. The applicant's father is having a photo studio and therefore, he has edited some photographs of the applicant and informant. It is forceful love. By using the said edited photographs, he was giving threats to the informant. He has committed rape on the informant, who is child. Her consent is not

legal consent. Therefore, considering the serious nature of the crime, it is lastly prayed to reject the application.

12. Perused the charge-sheet, particularly, the report and the statements of the witnesses. It is not disputed that the informant is 17 years old and her birth date is 25.05.2006. Therefore, as per the POCSO Act and Section 90 of the IPC, her consent for alleged sexual intercourse is not a consent in the eyes of law. The conduct of the applicant from the report and the statements of the witnesses show that the applicant forced her for love. The informant is a child as per POCSO Act. Though there is delay for lodging the report, it is explained that the parents of informant tried to convince the applicant. There are presumptions against the applicant under sections 28 and 29 of the POCSO Act. The applicant produced numerous photographs and whatsapp chats. Those are produced to show that there was love affair. But the learned APP and learned advocate for respondent no.2 submitted that the applicant's father runs photo studio and the applicant must have developed it as alleged by the informant.

13. To love is not an offence, however, overt act after love is certainly an offence. Overt act of the applicant is specifically stated by the informant in her report that he showed those photos to her friends and defamed her. It is alleged by the informant that the applicant has mixed the stupefying substance in the Pulao and it was

given to her for eating prior to committing of the sexual assault and due to which she felt dizziness. Thereafter that aggravated sexual assault was committed in a car. After second day of incident, she regained consciousness. She did not lodge report immediately. In such a fact situation the medical evidence cannot be expected. The report was not lodged immediately, however, it is admitted fact that victim is a child and in Indian culture, Indian girls and womans are not easily proceeding to file a report about such incident due to fear of defamation and mental trauma etc. It is a matter of evidence and at this stage, meticulous consideration of evidence is not expected.

14. Even if there has been an affair a woman or a girl child may stop the love affair if temper of both are not adjustable. It is choice of each one. However, the applicant's conduct shows that he wanted to continue that love affair even after he was convinced by the parents of informant to not to harass her. Having earlier love is not a permanent licence to harass such child frequently only because she loved earlier. A girl or child like applicant has right to refuse to continue it. The applicant showed the photographs to the friends of informant. This act of the applicant is illegal, serious criminal overt act. It is kind of blackmail. This shows that he tried to defame her on pretext of love showing her photographs to other shows that he want to compel her to love with him forever. Thus it is forcible love, since beginning.

15. The learned advocate for the applicant also submitted that after the sexual assault a report was not lodged by the parents of the informant when she was missing for two days. But fact is that she was not residing with them. However, it is a matter of evidence and the facts of case show that the informant was not residing with her parents. They were not knowing the facts. Further the conduct of parents shows that they tried to convince the applicant to not to meet the informant. But thereafter, the applicant tried to contact her, and therefore, the report was lodged. All these facts if considered along with the object of POCSO Act, the ratio laid down in the above authorities (cited supra) by the applicant cannot be made applicable to this case as the facts are different and it was not real love but forcible love. Considering all these aspects, the argument of the learned advocate for the applicant is not acceptable. If the applicant is released on bail, there is possibility of pressurizing the prosecution witnesses. Considering serious nature of the crime and in view of the law laid down by the Hon'ble Apex Court in the cases of **Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559** **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684**, that applicant is involved in the serious crime. The application deserves to be rejected.

16. It is also alleged that the applicant's father is having photo studio, therefore, easily those photographs and WhatsApp

chatting was developed. It is matter of evidence. As far as fabricated photographs and alleged fabricated WhatsApp chat produced before this Court are concerned, it is produced before this Court. The family members of this applicant are having custody of those photographs and chats. There is fear of showing those to others again. Therefore, it would be proper to prohibit them from showing or using those photographs and whatsapp chats except in defence in the Court. Investigating Officer may consider this aspect in legal sense and proceed further for use of the same as per the provisions of law. The application deserves to be rejected. Hence the following order:-

O R D E R

1. Application is rejected.
2. The fees of Ms.Neeta Mirajkar, the learned advocate appointed to represent cause of respondent no.2 be paid through the High Court Legal Services Sub-Committee, Aurangabad as per the schedule and rules.

(SANJAY A. DESHMUKH, J.)

sga