



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 BAIL APPLICATION NO. 465 OF 2024

Vishal Subhash Bobade

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. ABC

..RESPONDENTS

Advocate for Applicant : Mr. Chondhekar Balaji S.

APP for Respondent/State : Mrs.Dipali S. Jape

Ms.Vanita H. Sangole (Jaitmal), advocate for respondent no.2
(appointed).

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 3rd MAY, 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.127 of 2023 registered with Narshi Police Station, Tq. & Dist. Hingoli, for the offences punishable under sections 363, 376(2)(I) of the Indian Penal Code and sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

2. It is averred in the report that the daughter of the informant, who is 15 years and 4 months old, was enticed by the applicant to have sexual intercourse with her. There were love affair between them.

3. Informant averred in the report that one day earlier to the incident, this applicant came towards the house of the informant and ran away. Thereafter, on 2nd day in the afternoon, he enticed his daughter. They were out of house for two days. Thereafter, the statement of the victim child was recorded wherein she stated that three times sexual intercourse between the applicant and victim child took place.

4. The learned advocate for the applicant submits that the applicant has roots in the society. It is case of love affair. The applicant will not flee away from the trial. The trial will take long period. It is lastly prayed to allow the application.

5. The learned APP for the respondent-State and the learned advocate appointed to represent the cause of respondent no.2 strongly opposed the application. He submitted that a child of 15 years and 4 months was sexually abused by aggravated sexual assault by this applicant. The applicant is involved in serious crime. The incident of enticing to the child also took place earlier and the words of understanding were given to the applicant. However, he repeated the same crime. It is lastly prayed to reject the application.

6. Perused the charge-sheet, particularly the report and the statement of the victim child. The medical examination report of the victim/prosecutrix is silent as to the aggravated sexual assault, which is because there was love affair between the prosecutrix and

applicant. This Court in the case of ***Vishal S/o Omprakash Verma Vs. The State of Maharashtra and anr.*** reported in ***2021 All MR (Cri) 187***, in para nos.11 and 12 held as under :-

“11. This Court in the case of **Sunil Mahadev Patil vs. State of Maharashtra [2016 All MR (Cri) 1712]** (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 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.

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."

7. In the case of ***Nitin Damodar Dhaberao Vs State of Maharashtra and another*** reported in ***2024 (2) ABR (Cri) 503***, in para no.6, this Court held as under :-

“6. Having heard learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as to the fact that applicant is arrested on 30.08.2020 and there is no progress in the trial though charge sheet is filed on 26.10.2020. As far as merit is concerned, admittedly victim is of 13 years of age and her consent is not relevant. However, the statements which are recorded by the Investigation Officer shows that victim has left her house at her own accord on the pretext of bringing the book from friend and not returned back at home. She also joined the company of the present applicant and also admitted her love relationship with the present applicant in her statement. From her statement it reveals that, she stayed along with the present applicant at various places and not made any grievance as she was taken by the present applicant by using some force. Thus it is apparent that, out of the love affair, she joined the company of the present applicant. The applicant is also of a tender age of 26 years and out of love affair they come together. It seems that, the alleged incident of sexual relationship is out of the attraction between the two young persons and it is not the case that applicant has subjected the victim for a sexual assault out of lust. Considering the fact that, though charge sheet is filed long back in the year 2020 and there is no progress in the trial and trial will take its own time for final disposal. In view of that, further incarceration of the present applicant is not required and no purpose will be served by keeping him behind bar. In view of that, the application deserves to be allowed by imposing certain conditions.”

8. It is case of love affair. To love is not an offence. But overt acts like forced, compelled, or one sided love etc., is serious offence. Further sexual assaults on child is made punishable by POSCO Act irrespective of consent. Our girl child is not safe anywhere. Further the consensual sex between girl child and such

applicant is not excluded from the punishment. Such defence is not available to the accused under any statute and such defence would be against the object of POSCO Act. No any criminal force is used by the applicant. But it does not mean that applicant is entitled for acquittal as a matter of right. The applicant has roots in the society. He will not flee away from the trial. Custody of the applicant is not necessary. The trial would take long period. Considering the nature of the allegations and ratio laid down in the above authorities as well as the peculiar set of facts and to prevent further sexual assault, it would be proper to direct the applicant to not to enter into village Khudaj, Tq.Sengaon, Dist. Hingoli, till the conclusion of the trial. The application deserves to be allowed on stringent conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No.127 of 2023 registered with Narshi Police Station, Tq. & Dist. Hingoli, for the offences punishable under sections 363, 376(2)(I) of the Indian Penal Code and sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 be released on bail on furnishing personal bond of Rs.25,000/- with one surety of the like amount on following conditions:-

- a) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence in any manner.
- b) The applicant shall not enter in village Khudaj, Tq.Sengaon, Dist. Hingoli, till the conclusion of the trial without permission of the trial Court.
- c) The applicant shall not indulge into same nature of crimes again.
- d) The applicant shall attend the trial regularly.

III. If any breach of the above conditions is noticed by the trial Court, it is at liberty to cancel the bail granted to this applicant without further reference to this Court.

IV. All these observations are prima facie in nature and the trial Court shall not be influenced by it.

V. Fees of Ms.Vanita H. Sangole (Jaitmal), the learned advocate appointed to represent the cause of respondent no.2 be paid through the High Court Legal Services Sub-Committee, Aurangabad as per rules and schedule.

(SANJAY A. DESHMUKH, J.)

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