



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

924 BAIL APPLICATION NO.525 OF 2024

Tushar Kailas More,
Age-21 years, Occu:Labour,
R/o-Village-Pimpalkotha Bk.,
Taluka-Erandol, District-Jalgaon.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Superintendent of Police,
Jalgaon, Taluka and District-Jalgaon,
- 2) The Investigation Officer of,
Erandol Police Station, Erandol,
Taluka-Erandol, District-Jalgaon,
- 3) X Y Z

...RESPONDENTS

...
Mr. Jitendra V. Patil Advocate for Applicant.
Ms. D.S. Jape, A.P.P. for Respondent Nos. 1 and 2
Mr. B.P. Thakare Advocate for Respondent No.3.

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CORAM: S.G. MEHARE, J.

DATE : 20th JUNE, 2024

ORDER :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim.
2. The Applicant is seeking bail in Crime No.191 of 2023

registered with Erandol Police Station, Erandol, Taluka-Erandol, District-Jalgaon for the offence punishable under Section 363, 366, 376 read with Section 34 of the Indian Penal Code and Sections 4, 8, 12, 21 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the applicant would submit that though the victim was 14 years old, she was able to understand the consequences of the acts she was committing. There was a love affair between the applicant and victim. They belong to different caste and therefore the parents of the victim were against their love affair. There was a danger to the life of the victim and therefore she voluntarily eloped with the applicant. Unfortunately they were caught on the Railway Station, Jalgaon. After her custody by her parents, victim was forced to state against the applicant. In fact, she never had complaint against the applicant. To save her life she had willingly gone with the applicant. However, she was forced to give a false statement against the applicant.

4. Learned counsel for the applicant further submits that the applicant never took advantage of the situation. Medical examination report is silent as regards the external or internal

injuries. There were no signs of sex, but only to oppose the affair on caste, applicant has been arraigned as accused. Learned counsel placed reliance on the case of *Sunil Mahadev Patil vs. the State of Maharashtra, 2016 ALL MR (Cri) 1712, Deepak s/o Ravindra Bhill vs. the State of Maharashtra (Bail Application No.1139 of 2020, decided on 22nd October 2020), Vishal vs. the State of Maharashtra and others, 2021 ALL MR (Cri) 187, S. Varadrajan vs. State of Madras, AIR 1965 SCC 942*. Referring to these Judgments he argued that in current situation there are many sources to teenagers to know about the sex, particularly attract towards the sex and the teenagers are falling prey to the circumstances. No violence has been committed and therefore, whether the offence is complete or not is not clear.

5. Learned APP has strongly opposed the application and argued that at the time of incident victim was 14 years old. Therefore, her consent is immaterial. The statement of the victim is specific about the sex against her desire. Applicant is seven years older than the victim. He was fully grown up. Therefore, the possibility of convincing the victim cannot be ruled out. The offence is serious. The case-laws relied upon are not applicable to the case in hand.

6. Learned counsel appearing for the victim has argued that the victim was a simple girl knowing nothing. She was not able to take correct decision. After the incident, the friends of the applicant were laughing and teasing the members of the family of the victim and her father had been threatened. Therefore, the entire family has been shifted to other place. He prayed to dismiss the application.

7. The cases of like this are mushrooming day by day. This Court in the Case of ***Sunil Mahadev Patil*** (supra) has observed that today the 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. The points those should be considered while deciding the bail applications in such cases, have been reproduced in Paragraph No.12 of the decision. This case is relied upon in the case of ***Vishal vs. the State of Maharashtra*** (supra). In the landmark Judgment of S. Varadaraj vs. State of Madras (supra) it has been held that if a minor girl had a capacity to know what she was doing and had voluntarily joined the accused, then in such case

it could not be said that the accused had taken her away from the protection of her lawful guardian.

8. Incident like this is the sign of rapid change in the societal structure. Many gadgets are available in the market to contact with anybody from anywhere. Lot of material is available for the knowledge of the teenagers about the sex. In our societal structure, caste is the burning issue. Normally the marriage in another caste is opposed for the reason that they have caste based thoughts.

9. As far as the record is concerned, it appears that the victim and applicant were in consensual relationship. She had apprehension of her life at the hands of her parents. She was with the applicant for about two days. There is nothing on record to show that she resisted the applicant. Medical evidence is also not supporting the prosecution. There seems to be a case of caste oppose to their affair. Considering the view of this Court in such matters and age of the victim and other circumstances, the Court is of the view that keeping the applicant behind the bars could not be justifiable for the acts in which the victim had shared. The family of the victim has already been shifted to the

other place. Absconding the other co-accused is no ground to reject the bail.

10. For the above reasons, the following order is passed:
following order :

ORDER

(I) Bail Application is allowed.

(II) Applicant - Tushar Kailas More be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in the above crime, on the condition that:-

(a) The applicant shall not tamper with the prosecution witnesses.

(b) The applicant shall not contact with the victim and her family members in any manner till the conclusion of the trial.

[S.G. MEHARE , J.]