



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 BAIL APPLICATION NO. 654 OF 2024

Sanket Murlidhar Hiwale

VERSUS

The State of Maharashtra and another

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Advocate for Applicant : Mr. S.G. Ladda and Mr. Akshay P. Lohade

APP for Respondent No.1: Mrs. Deepali S. Jape

Advocate for Respondent No.2 : Mr. Uddhav S. Jadhav

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WITH

BAIL APPLICATION NO. 636 OF 2024

Karan Gautam More

VERSUS

The State of Maharashtra

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Advocate for Applicant : Ms. Pranoti R. Karpe h/f Mr. A.S. Khedkar
and Mr.S.R. Chavan

APP for Respondent No.1: Mrs. Deepali S. Jape

Advocate for Respondent No.2 : Mr. Uddhav S. Jadhav

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 7th MAY, 2024.

PER COURT :-

1. These are the applications for granting bail under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") in connection with crime No. 004 of 2024 registered with Mukundwadi police station, District Aurangabad for the offences punishable under Sections 363, 376, 354-A, 354-C, 354-D of the I.P.C. and under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012. Their applications with similar prayer below Exh.10 and 25 respectively, in Special Case No. 94 of 2024 came to be rejected

by the learned Special Judge (POCSO Act), Aurangabad vide order dated 22.3.2024.

2. It is averred in the report by the informant that she went to her girl friend on 1.1.2024 at about 11.00 a.m. When she was returning to her home at about 2.00 p.m. the applicant Sanket in bail application No. 654 of 2024 met her alongwith co-accused Akash (it is in fact Ajay). The applicant Sanket requested her to come with them in the garden. She sat on that motor cycle and went to Cannaught place, Aurangabad. They had a chat there. The applicant Sanket told her to go to her friend's house and come back at 6.35 p.m. Accordingly, she went to her friend's house at about 5.00 p.m. Thereafter, at 6.45 p.m. the applicant Sanket came there. He took the informant to his house. He told her that he will perform marriage with her and forcibly committed sexual intercourse with her. They came back. That time, co-accused Akash/Ajay and son of his uncle were there. They asked her as to whether she is going to marry with Sanket. She said yes. Thereafter, Sanket left the informant at his house. When he came back under the influence of liquor, he told Akash/Ajay Hiwale and the son of his uncle to leave her to her house. She went at her house at about 11.44 p.m. Her uncle came there and he enquired with the applicant Akash/Ajay. They both ran away. Thereafter, report was lodged against the applicant and accused Akash/Ajay. After lodging the report, supplementary statement of the informant was recorded, in which it is alleged that

co-accused Akash/Ajay committed aggravated sexual intercourse with the victim. He also recorded video shooting and snapped the photographs and threatened that he will make the same viral. Thereafter on 11.1.2024, supplementary statement of the informant was recorded in which she alleged that there was WhatsApp chatting between her and Akash/Ajay. Akash/Ajay sent her message that he likes her. She replied to that as Yes. Thereafter, they met on 30.8.2023 and the sexual intercourse took place between them in the open space at the back side of her house. Then they both ran away for entire night and they stayed in front of one shop in Pundliknagar area. Then she went with Karan into *Me and Tu Cafe*. Karan snapped some photographs while kissing her.

3. Learned advocate for the applicants submitted that the age of the victim is seriously doubtful. He pointed out the birth certificate of the prosecutrix. It is in fact not the birth certificate but it is a copy of admission register in which date of birth is mentioned as 18.12.2008. However, copy of the said register is not fully drawn but it is partly drawn up from column 3 to 22. Name of the victim is not appearing in the said register. Learned advocate for the applicants relied upon the authority of the Supreme court in the case of ***P. Yuvaprakash vs. State Rep. By Inspect of Police, reported in 2023 SCC Online SC 846***. Para 14 of the said case reads as under:-

“14. Section 94 (2)(iii) of the JJ Act clearly indicates that the

date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence."

4. Learned advocate for the applicants submitted that from the statement of the informant it appears that that the informant is pursuing the M.P.S.C. examination however, in the F.I.R. the informant has not stated that in which standard she is studying. This shows she is not child as defined in Protection of Children from Sexual Offences Act, 2012. Therefore, she is not below the age of 18 years and therefore, it is case of consensual sexual relations

between the applicants and the informant. He therefore, submitted that further custody of the applicants is not necessary.

5. Learned advocate for the applicant Karan in bail application No. 636 of 2024 submits that name of Karan is not mentioned in the report. His name is added in view of the supplementary statement, which is seriously doubtful. She therefore, prayed for granting bail to the applicant Karan.

6. Learned advocates for the applicants in both the applications are relying upon the authority of this Court in the case of ***Nitin Damodar Dhaberao vs. State of Maharashtra and another, reported in 2024 (2) ABR (Cri.) 503***. Para 6 of the said authority reads 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.”

Learned advocates for the applicants lastly prayed to allow the applications.

7. Learned A.P.P. for the respondent-State has strongly opposed the applications and pointed out the Aadhaar card of the informant showing her birth date. Therefore, at this stage the admission register of the informant cannot be doubted. The informant is a child as defined under the POCSO Act. More than four accused persons are involved and committed sexual assault on the prosecutrix. The applicants are booked under the serious crime. Considering the peculiar facts of the case, the learned A.P.P. submitted to reject the applications.

8. Learned advocate Mr. U.S. Jadhav for respondent No.2 was

absent yesterday and today also he is not present. Yesterday this court adjourned the matter for today to file the proof of admission of the prosecutrix. Learned A.P.P. shown some 1/2 pages of the register of admission of the informant. Learned A.P.P. pointed out that a complaint was given by the father of the prosecutrix that the relatives of these applicants are pursuing him and therefore he has expressed fear that something may happen against him. Learned A.P.P. lastly prayed to reject the applications.

9. Perused the charge sheet, particularly the report and the statement of prosecutrix as well as the report of the medical examination of the prosecutrix which does not show any injury to her. The report shows that the informant was with the applicants and thereafter with Akash/Ajay. The conduct of the informant shows that no any criminal force was used against her and thus there was no such aggravated sexual assault on her. The birth certificate of the informant is not produced on record. The birth register of the admission of the informant, in which her name is not mentioned, cannot be accepted. So far as the Aadhaar card is concerned, the birth date and other details are general in nature given by the person concerned at the time of drawing the same. Apart from all these, the conduct of the informant shows that she has submitted herself with the applicants for the allegedly sexual relations. Further she herself went with Akash/Ajay at her own.

10. Considering the fact that entire investigation is over and the charge sheet is filed further custody of the applicants is not necessary. The applicants have roots in the society, he will not flee away from the trial. As far as alleged threat and happening of such incident in future with the father of the informant at the instance of these applicants is concerned, this court can give certain directions. The applications therefore, deserve to be allowed on certain conditions. Hence, the following order.

O R D E R

- I. Applications are allowed.
- II. The applicants in both the applications in connection with crime No. 004 of 2024 registered with Mukundwadi police station, District Aurangabad for the offences punishable under Sections 363, 376, 354-A, 354-C, 354-D of the I.P.C. and under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 be released on bail on furnishing personal bond of Rs.50,000/- each with one surety each of the like amount on following conditions:-
 - a) The applicants shall not tamper with the prosecution evidence and shall not pressurize the witnesses, in any manner.
 - b) The applicants shall not enter in entire Aurangabad city for a period of four months from today except the dates fixed for hearing of the case that too in the area of the Court.

- c) If any breach of the above conditions are noticed by the trial court or the prosecution, the trial court is at liberty to cancel the bail of the applicants without reference to this Court.

11. Humdast allowed.

(SANJAY A. DESHMUKH, J.)

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