



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

BAIL APPLICATION NO. 1060 OF 2024

NARAYAN LAXMAN SANGLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Ramchandra J. Nirmal
APP for Respondent No.1 : Ms. M. N. Ghanekar
Advocate for Respondent No.2 : Mr. S. G. Dodya
...

CORAM : S. G. MEHARE, J.

DATE : 06-08-2024

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1 and the learned counsel for respondent No.2.
2. The applicant who is 30 years old seeks bail in C.R.No.826 of 2023 registered with City Police Station, Hingoli, for the offences punishable under Sections 363, 376(2)(n) read with Section 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").
3. Learned counsel for the applicant stressed on the medical evidence and argued that in no way medical evidence is supporting the prosecution case. He submits that there were no fresh injuries and no such injuries would be caused due to forceful

sex. He submits that the applicant was well acquainted to the victim. He was in relationship with her. He submits that the allegations have been exaggerated. There was no forceful sex. His detention would serve no purpose.

4. Per contra, the learned A.P.P. has strongly opposed the application. She argued that the victim is 13 years old at the time of the incident. Even if the case of applicant, that he was in relationship with the victim is accepted, she was below 13 years, he does not deserve bail in view of the pronouncement of the case ***X.Y.Z. (Minor) vs. The State of Jharkhand & Anr., 2022 LiveLaw (SC) 194***. She submits that absence of injuries may not be a ground for bail. The applicant's case that he had sexual relationship with the victim, is sufficient to believe that he has violated the provision of POCSO Act and did forceful sex with the victim.

5. Admittedly, the victim was 13 years old at the time of the incident and applicant was 30 years old. He took the victim from the custody of her parents to lonely place and did forceful sex. The statement of the victim is very specific about forceful sex. In her medical examination, it was found that she was having old healed injury to hymen. The object of the POCSO Act is to protect the children from sexual assault and that must be respected.

6. While considering bail application in such offence, the Court should consider the mental capacity of the child to take decision. In the case ***X (Minor) Versus The State of Jharkhand (supra)***, Hon'ble Supreme Court has laid down the law that though the accused and the victim had love affair, no bail should be granted where the victim is / about thirteen years old. Granting bail to such accused may defeat the very object of the POCSO Act. That apart, the law is settled that the oral evidence prevails over the medical evidence. Considered the facts in toto and ratio laid down in the case of ***X (minor)*** (supra), the applicant does not deserve bail.

7. Hence, for the above reasons, the application stands dismissed.

8. It is made clear that these observations are restricted to present bail application only.

(S. G. MEHARE)
JUDGE

rrd