



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 BAIL APPLICATION NO. 2045 OF 2023

Manohar Balaji Kadam

Versus

The State of Maharashtra And Another

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Advocate for Applicant : Mr. R. V. Gore h/f Mr. K.A. Pathade

APP for Respondent/State : Mr. S. A. Gaikwad

Advocate for Respondent no.2 : Ms. Tanvi V. Jadhav

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 5th JANUARY, 2024.

PER COURT :-

1. This is an application for grant of regular bail under section 439 of Cr.P.C. in connection with crime No. 206 of 2023 registered with Phulambri police station, Tq. Phulambri, District Aurangabad for the offences punishable under Sections 363, 376 (2)(n) and 376 (3) of I.P.C. and sections 4 and 6 of the Protection of Children from Sexual Offences Act. His application below Exhibit-08 in Special Case No.452 of 2023 with similar prayer came to be rejected by the learned Special Judge, Aurangabad, vide order dated 03.11.2023.

2. It is alleged that the applicant had taken away the daughter of the informant, who was 14 years and 6 months old and committed rape on her.

3. Learned counsel for the applicant pointed out the statements of

prosecutrix recorded for two times, one under Section 161 and another under Section 164 of Cr.P.C. When her earlier statement was recorded, she has stated on her own that she went with the applicant as there were love affairs. She stayed with him at Nigdi, Pune. In her subsequent statement, she has stated that when they resided at Nigdi, Pune, there were sexual intercourse between them. They stayed there for two months. In her statement, recorded before the learned Magistrate under section 164 of Cr.P.C. lastly she stated that there was pressure of father and maternal uncle on her for giving such statement. She has lastly expressed that she is willing to marry with the applicant after she attains the majority. Learned advocate for the applicant lastly pointed out the report of medical examination of the prosecutrix. He lastly prayed to allow the application.

4. Learned A.P.P. for the respondent-State has strongly opposed the application. Learned advocate for respondent No.2 has also strongly opposed the application. She pointed out the statement of the prosecutrix recorded under Section 164 of Cr.P.C. She also pointed out the statement of the prosecutrix made before the Medical officer that she was sexually assaulted and physically abused by the applicant. Learned advocate for respondent No.2 submits that the prosecutrix is below the age of 18 years and therefore, her consent is immaterial considering the serious nature of the crime and consequences. It is lastly prayed to reject the application. In support of her contentions, learned advocate for respondent No.2 places

reliance on the judgment of Hon'ble Supreme court in the case of **Satish Kumar Jayanti Lal Dabgar vs. State of Gujarat, reported in 2015 SCC OnLine SC 198** and more particularly para 15 thereof, which reads as under:-

“15) The Legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance.”

5. Perused the charge sheet. The contradictory statements of the prosecutrix, recorded under Section 161 and 164 of Cr.P.C. Learned advocate for the applicant pointed out that the prosecutrix age proof i.e. birth certificate is not available and therefore, school leaving

certificate is filed on record. The statement of landlord of the applicant and prosecutrix shows that the applicant and prosecutrix stayed in his room as husband and wife. The prosecutrix is having the age of understanding and the consequences. Considering the different set of facts, the authority in the case of **Satish Kumar Jayanti Lal Dabgar vs. State of Gujarat**, cited (supra) is not helpful to respondent No.2.

6. Considering the contradictory statements of the prosecutrix and the fact that the applicant has roots in the society, the application deserves to be allowed on certain conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No. 206 of 2023 registered with Phulambri police station, Tq. Phulambri, District Aurangabad for the offences punishable under Sections 363, 376 (2)(n) and 376 (3) of I.P.C. and sections 4 and 6 of the Protection of Children from Sexual Offences Act, be released on bail on furnishing personal bond of Rs.15,000/- with one surety of the like amount on following conditions:-
 - a) The applicant shall not enter within the jurisdiction of Badnaur Taluka, district Jalna, till conclusion of trial.

- b) The applicant shall not tamper with the prosecution evidence and/or shall not pressurize the prosecution witnesses in any manner.

7. Since Ms. Tanvi V. Jadhav, learned advocate, is appointed to represent the cause of respondent No.2, her fees be paid as per the schedule of fees maintained by the High Court Legal Services, Sub-Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)

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