



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 BAIL APPLICATION NO. 2120 OF 2023

Mahendra Trayambak Sathe

Versus

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Barlota Ambar S.

APP for Respondent No.1: Mrs. Pratibha J. Bharad

Advocate for Respondent No.2 : Mr. P.N. Kutti

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

PER COURT :-

1. The applicant is seeking bail under section 439 of Cr.P.C. in connection with crime No. 0194 of 2023 registered with Karmad police station, District Aurangabad for the offences punishable under Sections 363, 376(2) (n), 506 of I.P.C. and under Section 4 and 6 of the Protection of Child from Sexual Offences Act, 2012. His application below Exh.9 in Special Case No. 353 of 2023 with similar prayer came to be rejected by the learned Special Judge (POCSO Act), Aurangabad, vide order dated 31.10.2023.

2. Initially, the informant-the mother of the prosecutrix lodged a report. The applicant is 40 years old and a teacher by occupation, teaching English subject to the prosecutrix. The prosecutrix in her statements stated that the applicant proposed her for marriage. He tried to pursue her and developed friendship with her. He tried to

contract her on the mobile phone of her mother. He tortured her and thereafter compelled her to flee away with him.

3. Learned counsel for the applicant submitted that if the statements of the driver of the car and lodge owner are considered, it seems that the prosecutrix has not objected or resisted the applicant for about 25 days, when they were together. They stayed at Bhilwada, Udaypur, Ahmadabad, Rajkot, Jaipur, Patna, Siligudi (W.B.), Agra, Gorakhpur, Bikaner, Waranashi, etc. The sexual intercourse took place between them at these places. He submitted that the prosecutrix is 17 years of 9 months old and she is having the age of understanding and consequences of the crime. Therefore, he prayed to allow the application.

4. Learned A.P.P. for the respondent-State has strongly opposed the application and pointed out the statements of the prosecutrix recorded under Sections 161 and 164 of Cr.P.C.

5. Learned advocate for respondent No.2 has strongly opposed the application and pointed out the statements of the prosecutrix recorded under Sections 161 and 164 of Cr.P.C. in which the prosecutrix has stated that initially, when the applicant proposed her, she refused by saying that the applicant is married and he is her teacher. Even then also the applicant pursued her and started to harass her. He used to sit on her bench in the class room. In this

way, defamation is caused to the image of the prosecutrix. On 11.6.2023, the applicant asked her to make him phone call on Whatsapp. The prosecutrix made phone call to the applicant. At that time, the applicant told her that one Nilam made him a phone call and stated that the image of both i.e. the applicant and the prosecutrix has been tarnished. Then the applicant stated they will flee away tomorrow morning. At that time, the applicant sent a message to her that he has left Jamner and proceeded towards her. The prosecutrix stated that she will not come with him. Then the applicant threatened her that if she is not coming, he will kill her father or brother. Thus, by blackmailing the prosecutrix, they fled away.

6. Perused the report. In her statement recorded under section 154 of Cr.P.C. the prosecutrix stated that the applicant forced her to flee away with him, by threatening to kill her father or brother. The statements of the prosecutrix recorded under Sections 161 and 164 of Cr.P.C. show that the applicant forced her to flee away with him. As far as the age of the prosecutrix is concerned, admittedly, she is 17 years and 9 months old. As per Section 90 of the I.P.C. her consent cannot be termed to be the consent, as prima facie, it appears that the same is obtained by threatening to kill her father and brother. Considering the age and profession of the applicant, he cannot be released on bail, as there is prima facie strong evidence against him. Therefore, the application deserves to be rejected. It is

accordingly rejected.

7. It is made clear that the observations made in this order are prima facie in nature and the trial court shall not get influenced by the said observations while concluding the trial.

(SANJAY A. DESHMUKH, J.)

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