



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**923 BAIL APPLICATION NO. 2237 OF 2023**

Pawan Subhash Solanke

..APPLICANT

-VERSUS-

1. The State of Maharashtra

2. XYZ

..RESPONDENTS

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Advocate for Applicant : Mr. Chavan Rajendra N.

APP for Respondent/State: Mrs.Pratibha J. Bharad

Advocate for Respondent no.2 : Mr. Patil Bipinchandra K. (appointed  
Through Legal Aid)

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**CORAM : SANJAY A. DESHMUKH, J.  
DATED : 8<sup>th</sup> FEBRUARY, 2024.**

**PER COURT :-**

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.340 of 2023 registered with Yawal Police Station, Bhusawal, Dist.Jalgaon, for the offences punishable under Sections 363, 366, 376 of the Indian Penal Code and sections 3 and 4 of the POCSO Act.

2. It is the prosecution case that the applicant taken away the prosecutrix, the daughter of the applicant, who is 16 years and 11

months. She is student of ITI. The applicant is resident of same village. He took her first to Nashik and thereafter to Mumbai. They were out of the house from 22/06/2023 to 29/06/2023. Both of them went to Faizpur Police Station.

3. It is alleged that the applicant committed sexual intercourse with the prosecutrix, and therefore, section 4 of the POCSO Act along with section 376 of the Indian Penal Code were invoked against the applicant.

4. The learned advocate for the applicant submitted that from six months, the applicant is behind bars. He has roots in the society. Charge-sheet is filed. Trial would take long period. He is relying upon the authority of ***Sunil Madhav Patil Vs State of Maharashtra***, reported in ***ABC 2016 (I) 34 BOM***, in which law is laid down in para nos.9, 10 and 11 as under :-

“9. In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous. Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie

under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail.

10. The offence of rape can be distinguished on the basis of the intention of the accused. There are incidents of rapes committed by gang like the case of Nirbhaya or Maya Thagi or Mathura which cannot be forgotten by Indian Society. So also rape committed in a savage manner or repeatedly by a single accused. There are some instances of rape which take place as a man wants to satisfy his lust and animal within him overpowers his reason. There are instances of rape where a man and a woman both are in love with each other and get involved into sexual relationship due to either physical or psychological need and in such type of rape, there is no violence which exists in other types of rape.

11. Today 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. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how

civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases”.

5. The learned advocate also relying upon the authority of this Court in the case of ***Manohar Balaji Kadam Vs. The State of Maharashtra and another*** in **Bail Application No.2045 of 2023, dated 5<sup>th</sup> January, 2024** and in which in para no.5, it is held as under:-

“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 no helpful to respondent No.2.”

6. In the case in hand, there are contradictory statements of the prosecutrix. In her statement dated 30.06.2023, she has stated that the prosecutrix insisted him to run away and accordingly her statement was recorded before the Woman and Child Welfare Committee, Jalgaon. Initially, the prosecutrix was not willing to go with her parents but she stayed there only for one night. Thereafter, she was brought to her parents house. Thereafter her version was changed and her statement was recorded before the Police as well as the learned Magistrate under section 164 of the Criminal Procedure Code, wherein she alleged that the applicant taken away her.

7. Criminal antecedents of the applicant is pointed out that he was an accused in Crime No.463 of 2022 registered under sections 279, 379, 337, 427 etc of the Indian Penal Code etc., for commission of theft of sand. The learned advocate for respondent no.2, therefore, objected to allow this application.

8. The learned APP has also strongly opposed the application by contending that the prosecutrix is child as defined in the POSCO Act. It is lastly prayed to reject the application.

9. Perused the charge-sheet, particularly the report and statements of the prosecutrix recorded immediately after the incident by Woman and Child Welfare Committee, Jalgaon. The prosecutrix has stated that she insisted the applicant to run away. Considering the fact that the applicant has roots in the society, he will not flee away from the trial, trial will take long period and in view of the law laid down in the above authorities **Sunil Patil** and **Manohar Kadam** (cited supra), the application therefore, 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.340 of 2023 registered with Yawal Police Station, Bhusawal, Dist.Jalgaon, for the offences punishable under Sections 363, 366, 376 of the Indian Penal Code and sections 3 and 4 of the POCSO Act be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following conditions:-
  - a) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence in any manner.

- b) The applicant shall not enter into village Kolnhavi, Tq.Yawal, Dist. Jalgaon till the decision of the trial.

III. Fees of Mr. Patil Bipinchandra K., learned advocate appointed to represent the cause of respondent no.2 be paid through the High Court Legal Services Sub-Committee, Aurangabad as per rules.

**(SANJAY A. DESHMUKH, J.)**

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