

State of Maharashtra and Anr. ... Respondents

Mr. Rafil Siddiqui, for respondent no. 2.

DATE : 28TH AUGUST, 2024.

3. Having gone through the charge-sheet and relevant material collected by the IO during the investigation, it appears that

there was a love affair between the applicant and the victim. It further appears that, therefore, though repeatedly the applicant committed the alleged sexual assault, she did not raise any alarm or lodge any complaint against the applicant.

4. The applicant is in jail from last about 1 year and during this period, the charge-sheet has been filed. The police also recovered and seized mobile phone from the applicant.

5. In the similar matter, the co-ordinate bench of this Court in the case of '*Nitin Damodar Dhaberao Vs State of Maharashtra, through Police Station Office of Police Station and Anr.*'¹ while considering the reasons for granting bail has observed thus:

"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

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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. Accordingly.....”

6. In view of the above referred observation and considering the period of incarceration of the applicant, coupled with the fact that prima facie there was love affair between the applicant and victim, I am of the opinion that, the further custody of the applicant is not necessary.

7. In the circumstances, though the learned counsel for the respondent no. 2 and learned APP are strongly opposing the application, I am of the opinion that the applicant is entitled for grant of bail. Accordingly, I pass the following order:

ORDER

- (i) Criminal Bail Application is allowed and disposed off;
- (ii) It is directed that the applicant shall be released on bail in Crime No.316 of 2023, registered with Gandhinagar Police Station, Kolhapur for the offences punishable under Sections 376 (2) (J) (N) of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO for short), on furnishing PR.Bond of Rupees Twenty-five Thousand with one solvent surety in the like amount;
- iii) The applicant shall not enter into the territorial jurisdiction of Gandhinagar Police Station, Dist: Kolhapur, till the conclusion of the trial, except on the date of trial. The applicant shall not contact the victim directly or indirectly.
- iv) The applicant shall provide his address and name of the nearby police station to the IO, which he shall attend the said Police Station on 1st and 16th day of every month between 10.00 a.m. to 11.00a.m., till the conclusion of the trial except on the date of trial.
- v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

vi) Liberty is granted to the State for cancellation of bail if the applicant commits similar offence;

vii) The applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any reason.

(ANIL S. KILOR, J)