

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1375 OF 2024

Vishal Balkrishna Avghade	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Shailesh Chavan a/w Mr. Nagesh Khedkar, Mr. Prashant Lomate and Mr. Omkar More for the Applicant.
Mr. Mayur S. Sonavane, APP for Respondent No.1-State.
Mr. Shubham Sane h/f Mr. Vishal Khatavkar for Respondent No.2.
Mr. A. L. Shinde, PSI, Satara City Police Station.

CORAM: MANISH PITALE, J.
DATE : 19th JUNE 2024

P.C. :

. Heard Mr. Chavan, learned counsel for the applicant, Mr. Sonavane, learned APP for respondent-State and Mr. Sane, learned counsel appearing for respondent No.2.

2. By this application, the applicant is seeking anticipatory bail as he apprehends arrest in connection with FIR No. 0936 of 2023 dated 1st November 2023 registered at Satara Police Station, for offences under Section 376 and 363 of the Indian Penal Code, 1860 (IPC) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).

3. In this case, as per the statement of the informant (victim) i.e. respondent No.2 given to the Police on 1st November 2023,

she got in touch with the applicant as he is also a resident of the same village. It is specifically stated that she was in touch with the applicant for two years as they were introduced on Instagram. It is stated that friendship developed between them, which got converted into love.

4. Thereafter, the respondent No.2 gave details about the incident in question, alleging that on 26th October 2023, the applicant and the respondent No.2 went on a motorcycle and reached a lodge. He allegedly took her in a room in the lodge and despite being aware of the fact that the respondent No.2 was a minor, he committed forcible sexual intercourse with her. Subsequently, the incident was narrated by the respondent No.2 to her mother and eventually, the FIR was registered.

5. The learned counsel for the applicant submitted that as per the statement leading to registration of the FIR and even as per the history given by the respondent No.2 herself during the course of her medical examination, she was familiar with the applicant and that they were in love with each other. It was emphasized that this clearly indicated consensual sexual intercourse between them. It was further submitted that even if the respondent No.2 is to be treated as minor, due to which consent may become irrelevant, it is crucial that the respondent No.2 was 17 years, 9 months and 12 days old at the time when the FIR was registered. In other words, it was indicated that she was on the verge of attaining the age of

majority. In that light, it was submitted that the respondent No.2 was very much having the capacity of taking her own decisions and therefore, this Court may consider the present application favourably.

6. Additionally, it was submitted that the medical examination report did not show any injury and it could be said that the said report fell short of demonstrating forcible sexual intercourse inflicted upon the respondent No.2.

7. The learned counsel for the applicant further submitted that the applicant is working as a Constable in the Indo Tibetan Border Police Force (ITBP) and unless, this Court grants relief, there is a distinct possibility of the applicant being suspended or losing his job. It is submitted that the applicant is ready to cooperate with the investigation, including presenting himself for medical examination and therefore, this Court may consider the present application favourably. Reliance was placed on orders of this Court in the case of ***Sunil Mahadev Patil v/s. State of Maharashtra*** (order dated 3rd August 2015, passed in Bail Application No. 1036 of 2015) and ***Rajkumar Uttam Padvi v/s. The State of Maharashtra & Anr.*** (order dated 12th October 2021, passed in Bail Application No. 890 of 2021), as also order passed by the Karnataka High Court in the case of ***Varun Kumar v/s. State of Karnataka & Anr.*** (order dated 18th April 2024, passed in Criminal Petition No. 2020 of 2024).

8. The learned APP opposed the prayer made in the present application on the ground that the respondent No.2 was a minor at the relevant time and therefore, the question of consent would not arise. It was submitted that in the statement leading to registration of FIR, the respondent No.1 had specifically alleged that the applicant was aware about the respondent No.2 being minor and yet he committed the aforesaid act. Attention of this Court was also invited to the statement of the respondent No.2 recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.), which indicated the manner in which the applicant had committed the aforesaid act. It was submitted that the orders relied upon by the learned counsel for the applicant can be distinguished on the basis that the said orders were passed in applications seeking regular bail. It is submitted that if anticipatory bail is granted to the applicant, it may set a wrong precedent.

9. The learned counsel appearing for respondent No.2 supported the submissions made by the learned APP and further emphasized that in the statement of respondent No.2 recorded under Section 164 of the Cr.P.C., she had specifically stated that they were friends and that they were not in love with each other. Attention of this Court was also invited to the statements of the classmate of respondent No.2 and her father.

10. This Court has perused the material on record, particularly,

the statement of respondent No.2, leading to registration of FIR. Although, in the statement of the respondent No.2 recorded under Section 164 of the Cr.P.C., she has stated that there was no love affair and that she was only friends with the applicant, the statement recorded on 1st November 2023 on the basis of which FIR was registered, specifically records that according to the respondent No.2 she was in touch with the applicant for about two years and therefore, friendship had got converted into love. The respondent No.2 has not claimed that during this period when she was familiar and in love with the applicant, he had, in any manner, exploited her. The only incident referred to in the aforesaid statement is of 26th October 2023, when the applicant is alleged to have taken the respondent No.2 on a motorcycle to a lodge and despite being aware of the respondent No.2 being a minor, he allegedly committed forcible sexual intercourse.

11. It is significant that the respondent No.2 was 17 years, 9 months and 12 days old on the date on which the FIR was registered at her behest. It is clear that she was on the verge of attaining majority. As to how such matters are to be treated has been discussed by this Court in the case of ***Sunil Mahadev Patil*** (supra). This Court took note of the manner in which case where the girl aged between 16 years to 18 years is to be dealt with, when she alleges rape or the material shows consensual sexual intercourse. In paragraph 12 of the said order, this Court observed as to what could be the considerations while deciding such bail

applications. The said paragraph reads as follows :

“12. The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered

- (i) What is the age of the prosecutrix, who is minor.*
- (ii) Whether the act is violent or not.*
- (iii) Whether there are antecedents or not.*
- (iv) Whether the offender is capable of repeating the Act or not.*
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.*
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.*
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.”*

12. The said order was followed in the subsequent order passed by this Court in the case of ***Rajkumar Uttam Padvi*** (supra).

13. Much emphasis was placed by the learned APP on the fact that these two orders concerned applications for grant of regular bail. But, it is relevant to note that the Karnataka High Court in the case of ***Varun Kumar*** (supra) found in similar circumstances, while considering an application for grant of anticipatory bail that medical examination in such cases assumes importance and if there is any material to indicate consensual relationship, it becomes a relevant factor.

14. Applying the aforesaid considerations, this Court finds that in the present case, the respondent No.2 herself has narrated that she was familiar with the applicant for couple of years before registration of FIR and that she was not only friends with him, but the relationship had taken the colour of love affair. This is corroborated by the statement of the father of the respondent No.2, recorded during the course of investigation. Therefore, the emphasis placed on behalf of respondents on the statement recorded under Section 164 of the Cr.P.C., for the present, may not assist the respondents beyond the point. There are no criminal antecedents of the applicant.

15. The impression that this Court has gathered is that respondent No.2 was not only in touch with the applicant, but the friendship between the two had taken the colour of a love affair and this is extremely crucial in the backdrop of the fact that on the date of the registration of the FIR respondent No.2 was 17 years, 9 months and 12 days old. She was on the verge of attaining majority.

16. Even in the history given during the course of her medical examination, the respondent No.2 stated that she was familiar with the applicant and that they used to meet each other and travel together on motorcycle, further stating that she had sexual contact with the applicant in a hotel. The medical examination report does not show any physical injury on the body of the respondent No.2. There are no injuries on the private parts of the

respondent No.2. At this stage, the report does not indicate forcible sexual contact suffered by the respondent No.2.

17. These circumstances assume even more significance when it is appreciated that the applicant is in service and he is working as a Constable with the ITBP. The applicant being arrested would have drastic consequences for him and this factor cannot be altogether ignored, only on the ground that the respondent No.2 being minor at the relevant time, the issue of consent would become irrelevant. The overall circumstances of the case are required to be appreciated and this Court is of the opinion that in the peculiar facts and circumstances of the present case, the applicant has made out a case for grant of anticipatory bail, particularly because he undertakes to cooperate with the investigation and also undertakes to remain present before the Investigating Officer for medical examination, if so required.

18. In view of the above, the application is allowed in the following terms :

(a) In the event the applicant is arrested in connection with FIR No. 0936 of 2023 dated 1st November 2023, registered at Satara Police Station, for offences under Section 376 and 363 of the IPC and Sections 4 and 6 of the POCSO, he shall be released on bail on furnishing PR Bond of Rs.50,000/- and one surety in the like

amount to the satisfaction of the trial Court.

(b) The applicant shall remain present before the Investigating Officer on 4th July 2024 and thereafter, as and when the Investigating Officer calls for his presence. The applicant shall cooperate with the Investigating Officer during the course of investigation and he shall also cooperate with the trial Court.

(c) The applicant shall not contact the respondent No.2 (victim-informant) in any manner whatsoever during the course of investigation and pendency of trial, if any.

(d) The applicant shall inform the concerned Police Station about his Contact Number and place of posting, as also his address and he shall update the same in case of change in the future.

(e) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

19. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the

observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application.

20. The application is disposed of.

MANISH PITALE, J.

BIPIN DHARMENDER
PRITHIANI

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