

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

**INTERIM APPLICATION NO.2981 OF 2023
IN
CRIMINAL APPEAL NO.428 OF 2023**

Akshay Vishnu Ghadage Applicant

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Rakesh Bhatkar a/w Mohit Dalvi a/w Mohan Devkule, Advocate for Applicant.
- Smt. Manisha R. Tidke, APP for the State/Respondent.
- Ms. Deepali A. Bagla, appointed advocate through Legal Aid Panel, for Respondent No.2 in IA/2981/23.

**CORAM : SARANG V. KOTWAL, J.
DATE : 01st JULY, 2024**

P.C. :

1. The Applicant was the accused No.1 in Special Case No.6/2021 before the Additional Sessions Judge, Ratnagiri. There were two other accused. The Applicant was convicted for offences punishable u/s 376(3) of the Indian Penal Code and u/s 3(a) r/w section 4, section 7 r/w section 8 of the Protection of Children from Sexual Offences Act, 2012. He was sentenced along with the other accused, for commission of offences

punishable u/s 363, 365, 366, 366-A r/w 34 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for 20 years and to pay a fine of Rs.20,000/- and in default of payment of fine to suffer simple imprisonment for one year, for the offence punishable u/s 376(3) of the Indian Penal Code.

He was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer simple imprisonment for six months for the offence punishable u/s 3(a) r/w 4 of the the Protection of Children from Sexual Offences Act, 2012.

He was sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for three months for the offence punishable u/s 7 r/w 8 of the the Protection of Children from Sexual Offences Act, 2012.

For the other offences, for which he was convicted with the other accused, the sentence was rigorous imprisonment for three years.

2. Heard Mr. Rakesh Bhatkar, learned counsel for the Applicant, Ms. Deepali A. Bagla, learned counsel for Respondent No.2 and Smt. Manisha R. Tidke, learned APP for the State.
3. The prosecution case is that the Applicant who was around 21 years of age and the victim who was around 15 years and 3 months of age, eloped together and stayed together in December 2020. It is the prosecution case that they had established physical relations. The victim's father lodged a police complaint. The victim and the Applicant were traced. The Applicant was arrested and then he faced the trial. He was convicted and sentenced as mentioned earlier.
4. Learned counsel for the Applicant submitted that the victim's statement was recorded u/s 164 of Cr.P.C. It is brought on record by the prosecution and it was used by the defence while cross-examining, which completely exonerates the present Applicant. She has not stated that the Applicant had established physical relations with her. He further submitted that even the

medical evidence supports the defence theory that the Applicant had not kept physical relations with the victim.

5. Learned APP as well as learned counsel for the Respondent No.2 on the other hand submitted that the victim's date of birth was 29/09/2005 and her birth certificate produced on record, is undisputed. Therefore, inspite of the consent, the offence is made out. They relied on the evidence of the father of the victim. They relied on the deposition before the Court wherein the victim had stated that the Applicant had established physical relations with her on 23/12/2020 before they eloped together on 28/12/2020. In this view of the matter since the offence is made out, the Applicant may not be granted bail.

6. I have considered these submissions. The evidence of the victim is important. She was examined as P.W.2. She has categorically admitted that she was acquainted with the Applicant. Thereafter they had developed friendship and then their friendship turned into a love affair. They used to meet each

other and used to talk on the phone. She used to go to his house. She has deposed that on 23/12/2020 she had gone to his house. At that time, they had their physical relations. After 5 to 6 days, the Applicant again met her in front of her house. Then they went together on his two wheeler. They went to the Applicant's sister's house. They stayed together. In the night, the police came there and took her to civil hospital. She was declared hostile. Learned APP showed her the statement recorded by the Magistrate u/s 164 of Cr.P.C. It was produced on record at Ex.16. She admitted that she had not mentioned in the statement that they had physical relations. She further explained that she was afraid and therefore she did not tell about it. The defence cross-examined her in respect of the story given by her in that statement u/s 164 of Cr.P.C. She admitted that she had not stated the incident dated 23/12/2020 before the learned Magistrate. She also admitted that when she gave her statement before the Magistrate, she did not make any complaint against the Applicant. She further admitted that even at the time of deposition before the Court, she had no complaint against the Applicant.

7. In this background, if the statement u/s 164 of Cr.P.C. is perused, it is seen that she had not referred to the incident dated 23/12/2020 at all. As far as the incident dated 28/12/2020 is concerned, she has clearly stated that she had gone with the Applicant on her own accord. She herself had called the Applicant at her house and had told her parents not to search for her. She had specifically stated that the Applicant had not forced himself on her. He did not cause any harassment to her and she had not stated that they had physical relations. This is very important. Thus, the victim herself has not supported the prosecution case and in fact she has completely stated in favour of the Applicant. Her date of birth is produced on record at Ex.125. Her date of birth was 29/09/2005. It is unchallenged. However, the question is whether there were physical relations. In that context, the learned counsel for the Applicant has also relied on the evidence of the Medical Officer, who is examined as P.W.9. The history given by the victim to the Medical Officer also mentions that they had eloped on 29/12/2020 and stayed together till 06/01/2021. During that time, they did not have

sexual intercourse. However, about 15 days back, they had one episode of physical intercourse.

8. In the cross-examination, the Doctor admitted that in this case, intercourse was old and it could be one month, six months or even one year old. He could not exactly state whether the intercourse had taken place prior to 15 days. He had examined the victim on 07/01/2021. He also admitted that though he found that the hymen was torn, but there could be other reasons for hymen tear.

9. Thus, from all these discussion it is clear that even as per the prosecution case, the theory of having the physical relations between 29/12/2020 and 06/01/2021 is extremely doubtful. As far as one episode on 28/12/2020 is concerned, the victim had not stated about it before the Magistrate and the medical evidence also shows that it may or may not be true. Therefore, considering the deposition of the victim, in which she has supported the Applicant, in this background, the Applicant deserves to be released on bail during pendency of his Appeal.

10. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.428 of 2023, the Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only), with one or two sureties in the like amount.
- (ii) The Applicant shall not cause any harassment to the victim.
- (iii) The application is disposed of.

(SARANG V. KOTWAL, J.)