

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2078 OF 2023

Rohit Uttam kamble ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Ramdas Shelke with Namdeo M., for the applicant.

Mrs. Veera Shinde, APP, for the Respondent/State.

CORAM : ANIL S. KILOR, J.

DATE : 25th JUNE, 2024.

PC:

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.359 of 2022, registered with Sangola Police Station, Dist:- Solapur for the offences punishable under Sections 363, 376(2)(n), 354-A, 354-D, 366 and 341 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC') and sections 4, 8, 12 and 42 of the Protection Of Children from Sexual Offences Act, 2012 (for short, 'POCSO').

3. From the allegations made in the complaint and also the statement of the victim, it is evident that there was a love affair and though the victim was minor, the applicant performed marriage with her. In a similar matter, a 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 , 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 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.....”

4. Since the facts of the present case are similar and the applicant is in jail from last two years and four months, I am of the opinion that the applicant is entitled for grant of bail.

¹ (2024) SCC online Bom 120

7. The learned APP is opposing the present application, however, considere the material collected by the IO during the investigation and the fact that there was a love affair and the physical relations were not out of lust, though the consent of the victim in such matters is not relevant, I am of the opinion that considering the period of incarceration, in light of the above referred facts, further custody of the applicant is not necessary.

8. As far as apprehension expressed by the learned APP and learned counsel for the victim that if the applicant is released on bail he may pressurize the witnesses as they are from the same village, same can be addressed by imposing some stringent conditions. Accordingly, I pass the following order:

ORDER

- i) Criminal application is allowed;
- ii) It is directed that the applicant shall be released on bail Crime No.359 of 2022, registered with Sangola Police Station, Dist:- Solapur for the offences punishable under Sections 363, 376(2)(n), 354-A, 354-D, 366 and 341 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC') and sections 4, 8, 12 and 42 of the Protection Of Children from Sexual Offences Act, 2012 (for short, 'POCSO'), on furnishing PR.Bond of Rs.25,000/- (Rupees Twenty-Five Thousand) with two local sureties in the like amount;
- iii) The applicant shall not enter into the territorial jurisdiction of Sangola Police Station, Dist:- Solapur, till the conclusion of the trial;

- 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 day of each month between 12:00 noon to 2:00 p.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 to apply for cancellation of bail in case of any breach of condition if the applicant commenced similar offence;
- vii) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

9. The Criminal Application is **disposed of** accordingly.

(ANIL S. KILOR, J)