



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2876 OF 2023

Yogesh Prabhakar Sawant

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ritesh Thobde a/w. Ms. Ankita Rai, Mr. Changdev Shingade and Ms. Zubi Ansari i/b. Mr. Sagar Tambe, Advocates for the Applicant.

Mr. Prasanna P. Malshe, APP, for the Respondent-State.

Mr. Swaroop Karade, Advocate, for the Respondent No.2.

Mr. Vinayak Devkar, A.P.I., Pandharpur Taluka Police Station present.

CORAM: MADHAV J. JAMDAR, J.

DATED : 20th MARCH 2024

PC:-

1. Heard Mr. Thobde a/w. Ms. Rai, learned Counsel for the Applicant and Mr. Malshe, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("Cr.PC"). The relevant details are as follows:-

1.	C. R. No.	201 of 2023
2.	Date of registration of F.I.R.	11/03/2023

3.	Name of Police Station	Pandharpur Taluka Police Station, District-Solapur
4.	Section/s invoked	376(3), 354, 354-A(3), 341, 500, 506 of the I.P.C., 1860. 4, 8, 12 and 42 of the POCSO Act, 2012
5.	Date of incident	Between 11/09/2022 to 10/03/2023
6.	Date of arrest	11/03/2023
7.	Date of filing of Charge-sheet	01/05/2023

3. As per the prosecution case, at the time of the incident, the Informant was 14 years and 5 months old and she was studying in 8th Standard. On 11th September 2022, at about 8.30 p.m. when the Informant was returning from her cousin brother's house, the Applicant expressed his love for her. It is further alleged that after about one or two months when the victim had been to her cousin brother's house, he handed over a cell phone to her and asked her to call and threatened her that if she fails to call, he would defame her in the village. Therefore, she used to call the Applicant and kept it a secret from her parents. It is also alleged that the Applicant has forcefully clicked selfies with the victim. As the Applicant had threatened the victim, she did not inform her parents about the incident. One Gahininath Chavan came to the

house of the victim with a proposal of marriage of the victim with the Applicant. However, they refused the same. On 10th March 2023 the father of the victim was informed by the cousin of the victim that the Applicant had kept pictures of the Applicant posing with the victim as his display picture on his Facebook and Instagram accounts. Thereafter, she disclosed about sexual assault by the Applicant to her father and the F.I.R. was lodged.

4. Mr. Thobde a/w. Ms. Rai, learned Counsel for the Applicant submitted that the victim did not immediately inform anything to her parents. In fact, the Applicant and the victim were in a romantic relationship. The victim and the Applicant were in contact with each other and the victim had kept it a secret from her parents. There is variance between the F.I.R. and the history given to the medical officer. Medical Report does not corroborates the allegation made by the victim. It is submitted that the allegation of penetrative sexual assault against the Applicant appears to be made at the behest of the parents of the victim. In fact, no such act has ever occurred. In fact, the Applicant and the victim were in a romantic relationship and therefore, the proposal of marriage was made to the parents of the victim which was

declined. It is submitted that F.I.R. was lodged at the instance of the parents of the victim. The Applicant is a young person in his early 20's and deserves a chance to secure his future.

5. On the other hand, Malshe, learned APP for the Respondent-State and Mr. Karade, learned Counsel for the Respondent No.2 strongly opposed the Bail Application. Both of them submitted that the Applicant is involved in serious crime. They submitted that after the marriage proposal was rejected by the parents of the victim, immediately photographs of the victim were made viral. Both of them submitted that the Bail Application be rejected.

6. Mr. Karade, learned Counsel for the Respondent No.2 placed reliance on a decision of the Supreme Court in *X (Minor) vs. The State of Jharkhand & Anr.*¹ and more particularly, on paragraph 6 of the said decision. The said paragraph No.6 reads as under:-

“6.The High Court has manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that “there was a love affair” between the appellant and the second respondent and that the case was instituted on the

¹ Criminal Appeal No.263 of 2022 arising out of SLP (Crl) No.9317 of 2021

refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO.”

7. As far as, the contention of Mr. Malshe, learned APP and Mr. Karade, learned Counsel for the Respondent No.2 that after marriage proposal was rejected, the photographs were widely shared, learned Counsel appearing for the Applicant submitted that in fact no photographs were widely shared and since the beginning the Applicant had kept pictures of himself posing with the victim as his display picture on his Facebook and Instagram accounts and the same was noticed by the cousin brother of the victim and same was pointed out to the father of the victim and immediately thereafter F.I.R. was lodged.

8. *Prima facie*, there is substance in the contention raised by Mr. Thobde a/w. Ms. Rai, learned Counsel for the Applicant that the Applicant and the victim were involved in a romantic relationship. The age of the victim was 14 years and 5 months at the relevant time. *Prima facie* there is no material to substantiate the contention that there is penetrative sexual assault by the Applicant on the victim. The Medical Report does not record any opinion about the same. Various findings recorded in the medical report do not corroborate the allegation that there was penetrative sexual assault by the Applicant. The perusal of the F.I.R. and statement of the victim recorded under Section 164 of the CrPC shows that the victim understands the consequences of her actions. As far as the reliance on the decision of the aforementioned Supreme Court is concerned, in that case, the age of the victim was barely 13 years. In that case F.I.R. was lodged as the 2nd Respondent i.e. the Accused refused to marry. In this case, material on record *prima facie* does not show that there is penetrative sexual assault by the Applicant on the victim. The Applicant is a young man aged 23 years. The Applicant is incarcerated for about 1 year.

9. Perusal of the record further shows that the incident in question occurred between 11th September 2022 and 10th March 2023, F.I.R. was lodged on 11th March 2023, the Applicant was arrested on 11th March 2023 and, Charge-sheet was filed on 1st May 2023. Except framing of the charge on 21st December 2023, there is no progress in the trial. As per the Charge-sheet, there are 15 witnesses proposed to be examined by the prosecution. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

10. There are no criminal antecedents against the present Applicant.

11. Mr. Thobde a/w. Ms. Rai, learned Counsel appearing for the Applicant states that as several witnesses are residing in Taluka-Pandharpur, the Applicant will therefore not reside within Taluka - Pandharpur and that the Applicant will reside at c/o. Shalan Dattatraya More-Aunti, Samarth Nagar, Near Civil Hospital, Solapur.

12. The Applicant does not appear to be at risk of flight.

13. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

14. In view thereof, the following order:-

ORDER

- (a) The Applicant – Yogesh Prabhakar Sawant be released on bail in connection with C.R. No.201 of 2023 registered with the Pandharpur Taluka Police Station, Taluka Pandharpur, District - Solapur on his furnishing P.R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.
- (b) The Applicant shall not enter the Pandharpur Taluka after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated,

in case of any change thereto.

- (d) The Applicant shall report to the Solapur Taluka Police Station, District – Solapur once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Solapur Taluka Police Station, District – Solapur to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The

Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

15. The Bail Application is disposed of accordingly.

16. It is clarified that the observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]