

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3572 OF 2023

Vrushabh Bahubali Shankargounda ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Omkar Chitale, for the Applicant.
Ms. Savita M. Yadav, APP, for the Respondent No.1-State.
Mr. Kamran S. Shaikh i/b. Mr. Nitesh Mohite, for the Respondent No.2.
Mr. P. P. Pujari, P.S.I.-Juna Rajwada Police Station, Kolhapur, present.

CORAM: MADHAV J. JAMDAR, J.
DATED: 23rd APRIL 2024

PC:-

1. Heard Mr. Chitale, learned Counsel for the Applicant, Ms. Yadav, learned APP for the Respondent No.1-State and Mr. Shaikh, learned Counsel for the Respondent No.2.

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

1.	C. R. No.	111 of 2021
2.	Date of registration of F.I.R.	11/03/2021

3.	Name of Police Station	Juna Rajwada Police Station, Kolhapur
4.	Section/s invoked	363 and 376(n) of the <i>Indian Penal Code, 1860</i> ; 4, 8, and 12 of the <i>Protection of Children from Sexual Offences Act, 2012</i> .
5.	Date of incident	11/03/2021
6.	Date of arrest	03/05/2021
7.	Date of filing of Charge-sheet	29/06/2021

3. As per the prosecution case, the Applicant and the victim were in a relationship and they eloped on 11th March 2021. Thereafter, the police found them on 3rd May 2021 and arrested the Applicant.

4. It is the contention of Mr. Chitale, learned Counsel for the Applicant that the Applicant was in a romantic relationship with the victim. He submitted that the victim voluntarily eloped with the Applicant. He submitted that in any case, the Applicant is a young person aged 26 years. He is incarcerated since 3rd May 2021. He submitted that even after completion of almost 3 years of imprisonment, the trial has not commenced yet. He submitted that the charge was framed on 2nd February 2023 and till date, four

witnesses have been examined. He submitted that as per the Charge-sheet, prosecution is going to examine a total of 20 witnesses and therefore, the trial will not conclude anytime soon.

5. On the other hand, Ms. Yadav, learned APP for the Respondent No.1-State and Mr. Shaikh, learned Counsel for the Respondent No.2 strongly opposed the Bail Application. Both of them submitted that although the material on record shows that the Applicant and the victim were involved in a romantic relationship, however, when the incident in question took place, the victim was aged 14 years and 6 months and therefore, it is clear that she was a minor at the time of the incident in question and therefore, a serious offence punishable under Sections 363 and 376(n) of the IPC and also under Sections 4, 8, and 12 of the POCSO Act, 2012 has been committed. Both of them submitted that the Applicant was warned from time to time to discontinue the said activity and in spite of that, he continued the said activity and eloped with the victim. Therefore, they submitted that the Bail Application be rejected.

6. Mr. Shaikh, learned Counsel for the Respondent No.2 relied on the order of the Supreme Court of India in the case of *X v. State of Jharkhand*¹. He relied on paragraph no.6 of the said order and therefore, he submitted that the Bail Application be rejected.

7. Perusal of the record shows that the Applicant along with the victim eloped on 11th March 2021 and they lived together for almost 2 months i.e. till 3rd May 2021 when the Police found them and arrested the Applicant. Perusal of the record further shows that in the present case, the F.I.R. was lodged on 11th March 2021, the Applicant was arrested on 3rd May 2021 and, Charge-sheet was filed on 29th June 2021. Thus, the Applicant is incarcerated since almost 3 years. However, there is no progress in the trial. It is to be noted that the charge was framed on 2nd February 2023 and till date i.e. even after a period of 1 year and about 3 months, only 4 witnesses have been examined. Ms. Yadav, learned APP states that the State of Maharashtra will examine about 20 witnesses. Thus, it is clear that the trial is unlikely to conclude any time soon and is likely to take a considerably long time as 16 more witnesses will be examined by the prosecution.

1 2022 Live Law (SC) 194

8. Prima facie, there is substance in the contention of Mr. Chitale, learned Counsel for the Applicant that the victim voluntarily eloped with the Applicant.

9. Mr. Shaikh, learned Counsel for the Respondent No.2 relied on paragraph no.6 of *X v. State of Jharkhand* (supra). The said paragraph no.6 reads as under:-

“6. The High Court was 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 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 the 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.”

10. However, it is to be noted that as far as the case decided by the Supreme Court is concerned, the F.I.R. was lodged on 27th January 2021. The date of arrest of the Accused in that case is not mentioned in paragraph no.3 but it may be on 27th January 2021 or immediately thereafter. In that case, the High Court granted bail on 2nd August 2021. In this case as noted herein above, the Applicant is incarcerated since about 3 years. Although, charge was framed on 2nd February 2023, only 4 witnesses have been examined till date i.e. even after a period of 1 year and 3 months and still about 16 witnesses are proposed to be examined by the prosecution.

11. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.²

2 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

12. Apart from the above, it is to be noted that in the case before the Supreme Court, the age of the victim was 13 years. As far as the present case is concerned, the victim is more than 14 years and 6 months. The factual position on record clearly shows that the victim was understanding the consequences of her actions. In fact, learned Counsel for the Applicant has submitted that this is a second time when the victim eloped with the Applicant. The factual position on record further shows that although parents of the victim were assaulting her for the relationship with the Applicant, the victim continued with the said relationship. Thus, the observations in paragraph no.6 of the decision of Supreme Court in *X v. State of Jharkhand* (supra) will not apply to the present case.

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

14. Mr. Chitale, learned Counsel for the Applicant states that as several witnesses are residing in Kolhapur City, the Applicant will therefore not reside within Kolhapur City and that the Applicant will reside at C/o. Dilip Balaso Patil (Uncle of the Applicant), Patil

Lane, Behind Jain Temple, Halondi, Shirol, P. Shirol, Kolhapur,
Maharashtra 416 122.

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

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

17. In view thereof, the following order:-

ORDER

(a) The Applicant – Vrushabh Bahubali Shankargounda be released on bail in connection with C.R. No.111 of 2021 registered with the Juna Rajwada Police Station, District-Kolhapur on his furnishing PR. Bond of Rs.50,000/- with one or two local solvent sureties in the like amount.

(b) The Applicant shall not enter the Kolhapur City 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 Kagal Police Station, District - Kolhapur 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 Kagal Police Station, District - Kolhapur 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.

18. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]

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