

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3957 OF 2023

Rushiraj @ Rushikesh Satish Babar ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Samadhan Kashid, for the applicant.

Mrs. Geeta Mulekar, APP, for the Respondent/State.

CORAM : ANIL S. KILOR, J.

DATE : 8TH JULY, 2024.

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PC:

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.568 of 2023, registered with Sangola Police Station, Dist: Solapur for the offences punishable under Sections 363, 366, 376(2) (N) of the Indian Penal Code, (for short, 'IPC') and Sections 4, 6, 8, 12 and 42 of the Protection of Children from Sexual Offences Act (for short, 'POCSO').

3. The applicant is in jail from last one year and having gone through the charge-sheet and the material collected by the Investigating Officer during the investigation, it is evident that there was a love affair between the applicant and the victim. The victim is 17

years and 9 months old on the date of incident, which shows that she was not major by age but gained sufficient maturity to understand the consequences of her decision in life.

4. Considering the material collected by the Investigating Office, it is doubtful whether sections 363 and 366 would apply to this case.

5. In the similar matter, the 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

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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.....”

6. Thus, considering the above referred observations and facts and circumstances of the present matter though the learned APP and the learned counsel for the respondent no. 2 are strongly opposing the application, I am of the opinion that the applicant is entitled for grant of bail. Accordingly, I pass the following order:

ORDER

- i) Criminal application is allowed;
- ii) It is directed that the applicant shall be released on bail in Crime No.568 of 2023, registered with Sangola Police Station, Dist: Solapur for the offences punishable

under Sections 363, 366, 376(2) (N) of the Indian Penal Code, (for short, 'IPC') and Sections 4, 6, 8, 12 and 42 of the Protection of Children from Sexual Offences Act (for short, 'POCSO'), on furnishing PR.Bond of Rupees Twenty-Five Thousand with one solvent surety in the like amount;

iii) The applicant shall attend the Police Station on 1st day of every month between 10.00a.m to 11.00 a.m., till the conclusion of the trial except on the date of trial;

iv) 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;

v) Liberty is granted to the informant and the State to apply for cancellation of bail if the applicant commits similar offence.

vi) The applicant shall attend the trial before the Special Court regularly on every date unless exemption is granted by the Special Court.

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

(ANIL S. KILOR, J)