

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 44 OF 2024

Arun Vijay Pardeshi

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Ms. Nishi Singhvi for Applicant
- Mr. A.S. Shalgaonkar, APP for State
- Mr. Swapnil S. Bangur, learned Advocate (appointed) for Respondent No. 2
- Mr. A.T. Shirke, PSI, Nagpada Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 09, 2024

P. C.:

1. Heard Ms. Singhvi, learned Advocate for Applicant; Mr. Bangur, learned Advocate (appointed) for Respondent No. 2 and Mr. Shalgaonkar, learned APP for the State.

2. Applicant has filed present Bail Application under Section 439 of Cr.P.C. in connection with Crime No. 237/2022 registered with Nagpada Police Station for the offences punishable u/S. 363, 376(2) (n) of the Indian Penal Code (for short “**IPC**”) and u/S. 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO**” Act).

3. Applicant claims to have known the victim for more than three years and it has also come on record that the Applicant and the victim

used to chat on instagram. Date of the incident is 06.05.2022. Applicant was arrested and since then, he is incarcerated.

4. It is an admitted position that both the Applicant and the victim resided in the same locality. Also at one place in one of the victim's statement, it is stated that both of them resided in the same building.

5. Ms. Singhvi would submit that on the basis of the versions recorded of the victim and placed at page Nos. 27, 33 and 67 of the Bail Application, it is clear that there is contradiction. It is seen that versions recorded at page Nos. 33 and 67 are recorded on 12.05.2022 and 13.05.2022 whereas the victim's version at page No. 27 is recorded on 23.05.2022. Therein the specific fact relating to the victim having gone missing from her residence on 06.05.2022 and certain facts thereafter are clearly inconsistent. It is seen that after the initial missing complaint was lodged, it was gathered that the Applicant had gone missing from his residence on the same date as that of the victim and in that view of the matter, after ascertaining the location of both the Applicant and the victim through their Mobile CDRs, both of them were apprehended from Nalasopara. Applicant and victim stayed together at Nalasopara for a period of around six days. There are other circumstances also which are narrated by the Applicant and the victim before the date of the incident as also after the date of the incident about their association. Ms. Singhvi would

submit that in view of the charges not being framed and the long incarceration of Applicant and in view of submissions made herein above, Applicant deserves to be enlarged on bail.

6. *PER CONTRA*, Mr. Bangur, learned Advocate (appointed) for Respondent No. 2 would at the outset submit that the date of birth of the victim being 21.05.2007, she would not be in a position to make an informed consent and therefore in view of description Sixthly of Section 375 of Cr.P.C. read with Sections 4, 8 and 12 of the POCSO Act and considering age of the victim, consent of the victim would be rendered meaningless. In that regard, Mr. Bangur has referred to and relied upon the decision of the Supreme Court in case of **Satish Kumar Jayantilal Dagbar Vs. State of Gujarat**¹ and he would draw my attention to paragraph Nos. 14 and 15 thereof and argue that the age of the prosecutrix needs to be considered by the Court and at such age, she can be easily lured into giving consent for such an act without understanding the implications thereof. He would submit that the Applicant in the present case has taken undue advantage of the alleged so called consent of the victim and the age of the victim is such that the so called alleged consent cannot be treated as a mitigating circumstance for considering Application for enlargement on bail. He

¹ (2015) 7 SCC 359

would submit that the consent of the victim is therefore meaningless and the Application be rejected.

7. Mr. Shalgaonkar, learned APP appearing for State would adopt the submissions made by Mr. Bangur and in addition thereto, would submit that considering the facts placed on record, including the version of the victim, this Court be pleased to reject the Bail Application.

8. I have considered the pleadings and *prima facie* it is seen that both the Applicant and the victim were known to each other and there is *prima facie* material on record to show that they were known to each other for quite sometime, rather more than three years before the date of the incident. There is also a clear dichotomy in the versions pertaining to disappearance of the victim on the date of the incident which on 06.05.2022 in the statements which have been recorded. Though the missing report was lodged with the Police Station by the first informant, who is the aunt of the victim, there is once again a dichotomy in respect of as to how the victim had left her house in the morning on 06.05.2022. It is seen that Applicant and the victim proceeded from Nagpada to Bombay Central Station and from there onwards, firstly to Virar where they could not get hold of any accommodation. Thereafter with the aid of the cousin brother of Applicant, they proceeded to Nalasopara where they rented a room

and lived together for about 5-6 days after which they were apprehended.

9. From the above, *prima facie*, it is seen that there was an association between the Applicant and the victim and in that view of the matter, I am inclined to accept the submissions made by Ms. Singhvi and allow the Application.

10. Considering the nature of allegations and the *prima facie* material on record, I am inclined to release the Applicant on bail.

Hence, I pass the following order:-

- (i) Applicant – Arun Vijay Pardeshi in connection with C.R. No. 237/2022 registered with Nagpada Police Station shall be released on bail on furnishing PR. bond to the extent of Rs. 50,000/- with one or two sureties of the like amount;

The Applicant shall be released on provisional cash bail of Rs. 50,000/- in lieu of sureties for a period of six weeks. During the said period, the Applicant shall arrange for sureties.

- (ii) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and the Applicant should not tamper with evidence.

- (iii) The Applicant shall not establish any contacts with the victim and shall move himself along with the family from the area where the victim is residing in and shall not make any attempt to establish contact with her, either physically or virtually.
- (iv) The Applicant shall attend the Nagpada Police Station on the first Saturday of every trimester between 3:00 p.m. to 5:00 p.m. The applicant shall attend the trial on regular basis.
- (v) On being released on bail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

11. Bail Application is allowed and disposed of in the above terms.

12. I would like to place on record my appreciation for Advocate Mr. Swapnil S. Bangur who has ably assisted this Court on being appointed through Legal Aid. The Legal Services Authority shall make over the remuneration to him as per rules within a period of four weeks from today.

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by RAVINDRA
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[MILIND N. JADHAV, J.]