

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 656 OF 2023

Sumant Durgavijay Chauhan ...Applicant

Vs.

The State of Maharashtra and Others ...Respondents

Ms. Kalpana Trivedi with Ms. Mamta Parab and Mr. Hiral Mistry, for Applicant.

Mr. S. R. Agarkar, APP for State-Respondent No. 1.

Mr. Nikhil Patil, for Respondent No. 2.

CORAM:- N. J. JAMADAR, J.

DATED:- 5th APRIL, 2024

ORDER:-

1) The applicant, who is arraigned in CR No. 404 of 2022, registered with Bangur Nagar, Link Road, Police Station, for the offences punishable under Sections 363, 366, 376 (2)(n), 376 (3) of the Indian Penal Code, 1860 ('the Penal Code') and Sections 4, 8 and 12 of the The Protection of Children from Sexual Offences Act 2012, ('POCSO'), has preferred this application to enlarge him on bail.

2) The first informant is the mother of a 16-year-old girl child – the victim. In the year 2022, the victim was studying in 8th standard. On 17th May, 2022, when the first informant had gone for work, the victim left home. As the victim did not return home and could not be traced despite search, the first informant lodged a report that somebody had kidnapped the victim out of her lawful guardianship.

3) The victim and the applicant were found at Talegaon Dhamdhere, Dist. Pune. It transpired that the applicant had enticed away the victim by giving her a promise of marriage. The applicant had instigated the victim to leave the home along with money. Thereupon, the victim had left the home with an amount of Rs.3,000/-, met the applicant at Motilal Nagar and, thereafter, they went to Pune and hired a room at Talegaon Dhamdhere and stayed there till the police came thereat. In the intervening period, the applicant had subjected the victim to sexual exploitation.

4) During the course of investigation, the statement of the victim came to be recorded. Medico medico-legal examination of the victim was conducted. The victim narrated that friendship developed between the victim and the applicant since two

months prior to the occurrence. The applicant had promised to marry her and induced her to leave the home along with money. While the victim and the applicant were staying in the room at Talegaon Dhamdhere, the applicant had forcible sexual intercourse with her.

5) Ms. Kalpana Trivedi, the learned Counsel for the applicant submitted that the applicant and the victim were in a relationship. The victim had left the home on her own. An endeavour was made to urge that based on sexual maturity rating the victim was more than 18 years of age. Thus, the victim had sufficient maturity of understanding to know the nature and consequences of the act. In this view of the matter, according to Ms. Trivedi, detaining the applicant in prison as an under-trial prisoner would serve no purpose. Reliance was placed on a decision of Patna High Court in the case of **Raushan Kumar s/o Bacchu Yadav Vs. The State of Bihar in Criminal Appeal (DB) No. 262 of 2022.**

6) As against this, Mr. Agarkar, the learned APP for the State stoutly resisted the prayer for bail. It was submitted that the applicant had exploited the child by giving a promise of marriage while actively concealing the fact that he was already married.

The version of the victim finds support in the medico-legal report. In her statement before the learned Magistrate recorded under Section 164 of the Code of Criminal Procedure, 1973 ('the Code, 1973'), the victim has reiterated the allegation that the applicant subjected her to aggravated penetrative sexual assault, repetitively.

7) Mr. Nikhil Patil, the learned Counsel appointed to espouse the cause of the respondent No. 2, also resisted the prayer for bail.

8) I have perused the report under Section 173 of the Code, 1973 and the documents annexed with it and the statement of the victim recorded under Section 164 of the Code, 1973. Prima facie, there is material to show that the applicant had taken away the victim and they both stayed at Talegaon Dhamdhere. The allegation of the victim that she was subjected to sexual assault finds prima facie support in the medico-legal examination report.

9) The thrust of the submission on behalf of the applicant was that the applicant and the victim were in a relationship. The victim had accompanied the applicant out of her own volition.

An endeavour was made to draw home the point that the victim was above 18 years of age.

10) I am afraid to accede to this submission. The school leaving certificate records the date of birth of the victim as 7th May, 2007. The alleged incident had occurred in the month of May, 2022. The victim had barely completed 15 years of age. At this stage, the submission on behalf of the applicant based on the sexual maturity rating, does not merit countenance.

11) It is true the victim has stated that a friendship had developed between the applicant and the victim. At the same time, the fact that the applicant had enticed away the victim by giving her a promise of marriage cannot be lost sight of. There is material to indicate that the applicant is married. Birth certificate of the daughter of the applicant forms part of the documents annexed to the report under Section 173 of the Code, 1973. Ms. Trivedi fairly submitted that the applicant has two children. This factor, prima facie, points to the complicity of the applicant for the alleged offences. The presumption contained in Section 30 of the POCSO Act, 2012, gets further fortified.

12) As the victim was prima facie below 16 years of age, the offence may fall within the dragnet of sub Section (3) of Section

376 of the Penal Code, 1860, which entails punishment for a term which shall not be less than twenty years.

13) In the aforesaid view of this matter, I am not inclined to accede to the submissions on behalf of the applicant. The application, therefore, deserves to be rejected.

14) Hence, the following order.

: O R D E R :

(i) The application stands rejected.

(ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]