

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1040 OF 2024

Prasad Ramesh Todkar

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Anand S. Patil, for the Applicant.

Ms. Savita M. Yadav, APP, for the Respondent No.1-State.

Ms. Anima Mishra a/w Mr. Anuj Singh, for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED: 06th MAY 2024

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1. Heard Mr. Patil, learned Counsel for the Applicant, Ms. Yadav, learned APP for the Respondent No.1-State and Ms. Mishra, learned Counsel appointed to represent the interests of Respondent No.2.

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

1	C.R. No.	643 of 2023
2	Date of registration of F.I.R.	17/10/2023
3	Name of Police Station	Wadgaon, District-Kolhapur
4	Section/s invoked	376, 376 (2)(n), 323, 504 & 506 of the <i>I.P.C., 1860</i> ; 4, 6, 8 & 12 of the <i>POCSO Act, 2012</i> .
5	Date of incident	18/11/2019 to 10/05/2023

6	Date of arrest	19/10/2023
7	Date of filing Charge-sheet	12/12/2023

3. As per the prosecution case, both the Applicant and the victim were enrolled in 12th standard in the year 2019 and on 6th November 2019, the victim expressed her feelings for the Applicant via Instagram. When the Applicant and the victim met each other, on the next day the Applicant also expressed his feelings for the victim and therefore Applicant and the victim entered into a relationship. As per the prosecution case, the Applicant thereafter had physical relations with the victim and when the victim insisted and getting married with the Applicant, he kept assuring the victim that he would marry her. In fact, the statement of the victim recorded under Section 164 of the CrPC on 27th October 2023 shows that on 25th December 2019 when the victim was insisting to get married and insisting that the Applicant should come to her residence and talk with her parents, he specifically told the victim that at that stage, both should focus on their education and that they would continue their relationship.

4. It appears that after March 2020 during lock down due to COVID-19 pandemic, the victim herself had sent about 1500 to 2000 of her own private and intimate photographs and videos to the Applicant. The Section 164 statement specifies that from the year 2020 to 2023, both of them had repeatedly visited the 'Tapasya Lodge' at Kolhapur and on

all these occasions, the victim only made the reservations and she incurred all expenses for the same. It is stated that the Applicant threatened the victim with physical assault if she declined to incur these expenses.

5. Mr. Patil, learned Counsel for the Applicant submitted that when their relationship started, the Applicant was aged 17 years. He submitted that the relationship was in fact started by the victim and that she was insisting to continue the relationship. He further submitted that the Applicant is a medical student doing B.A.M.S. enrolled at 'Sri Raghavendra Ayurveda Medical College & Hospital', Malladihalli-577 531, Taluka-Holalkere, District-Chitradurga, Karnataka. He submits that the Applicant is a young man aged 23 years and that he is incarcerated since 19th October 2023. He submitted that investigation has been completed and the Charge-sheet has been filed on 12th December 2023. He submitted that if the Applicant is not granted bail, he will not be able to pursue and complete his academic course. He pointed out the earlier Order dated 15th March 2024 by which the Applicant had been granted temporary bail to appear at the college examinations. He submitted that aforementioned sensitive photographs and videos have already been taken into custody by the Investigating Officer and that the Applicant is ready to file an Undertaking in this Court after his release on bail, stating that he has no more sensitive photographs or

videos of the victim. If in case he has any more photographs or videos of the victim, then he will immediately handover the same to the Investigating Officer and that he will not misuse or circulate the said photographs or videos in any manner whatsoever. He will not share such sensitive media to any persons and that he will refrain from attempting to widely share such images or videos.

6. On the other hand, Ms. Yadav, learned APP and Ms. Mishra, learned Counsel appointed to represent the interests of Respondent No.2 strongly opposed the Bail Application. Both of them submitted that the Applicant was demanding physical and sexual relations on the false assurance that the Applicant would marry the victim. Therefore, the Applicant has sexually exploited the victim. Both of them submitted that there is a likelihood that the Applicant will misuse and circulate the said sensitive intimate photographs and videos and will attempt to threaten, pressurise, blackmail or influence the victim. Both of them pointed out an Affidavit of the victim dated 1st April April 2024 where an apprehension is expressed that there is a threat to her life and to the lives of her family members and that the Applicant will pressurise her and exercise undue influence in case he is released on bail. It is stated that the Applicant is residing at a very short distance from the victim's residence i.e. about 2 k.m.. It is also stated that the father of the victim is in Solapur and that he is a teacher and therefore there is no male

person in the victim's family except her grand father and her younger brother.

7. In addition to these submissions, Ms. Mishra, learned Counsel appointed to represent the interests of Respondent No.2 relied on the decision of the Supreme Court in the case of *Anurag Soni v. State of Chhattisgarh*¹ and more particularly on paragraph No.12 thereof. In paragraph No.12, after reviewing various decisions of the Supreme Court, it is held as follows:

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 IPC and can be convicted for the offence under Section 376 IPC.”

8. Perusal of the record shows that the romantic relationship between the Applicant and the victim started at the instance of the victim. Both of them were minor at the relevant time. Presently, the Applicant is aged 23 years and the victim is aged 22 years. The Applicant is a student of 2nd year B.A.M.S. and he is enrolled in ‘Sri Raghavendra Ayurveda Medical College & Hospital’, Malladihalli-577 531, Taluka-Holalkere, District-Chitradurga, Karnataka.

¹ (2019) 13 SCC 1

9. *Prima facie*, the ratio of *Anurag Soni* (Supra) is not applicable to the facts of the present case.
10. Mr. Patil, learned Counsel for the Applicant states in view of the apprehension expressed by the victim, the Applicant will not enter the District-Kolhapur till the conclusion of the trial. He also states that the Applicant will not use, circulate, or share the said sensitive and intimate images and videos of the victim in any manner whatsoever.
11. The Applicant does not have any criminal antecedents.
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- Prasad Ramesh Todkar be released on bail in connection with C.R. No.643 of 2023 registered with the Wadgaon Police Station, District – Kolhapur on his furnishing PR. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.
- (b) The Applicant is permitted to furnish cash bail surety in the sum of Rs.25,000/- for a period of four weeks in lieu of surety.
- (c) The Applicant shall not enter the Kolhapur district after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (d) 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.

- (e) The Applicant shall report to the Wadgaon Police Station, District – Kolhaur as when called, until the conclusion of the trial.
- (f) 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.
- (g) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (h) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (i) The Applicant shall surrender his passport, if any, to the Investigating Officer.
- (j) The Applicant to file Affidavit/Undertaking in this Court within a period of six weeks from the release on bail undertaking to this Court that the Applicant is not in possession of any images, photographs, or videos of the victim. If any images, photographs, or videos are found in the Applicant's possession, then the Applicant shall immediately hand over the same to the Investigating Officer and that the Applicant will not use, circulate or share the said images or videos in any manner whatsoever.

15. The Bail Application is disposed of accordingly.

16. It is clarified that the Trial Court shall decide the case on its

merits, uninfluenced by the *prima facie* observations made in this Order.

17. This Court places on record its appreciation for the assistance rendered by Ms. Anima Mishra, learned Counsel appointed to represent the interests of the Respondent No.2. Professional charges be paid to her as per rules and her name be included on the Panel of Advocates of the High Court Legal Services Committee, Mumbai.

[MADHAV J. JAMDAR, J.]