

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1891 OF 2024

Vijay Jagannath Kamble ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Mahendra V. Kawchale, Advocate, for the Applicant.
Ms. Savita M. Yadav, APP, for the Respondent No.1-State.
Mr. Premkumar N. Mishra, Advocate, for the Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.
DATED : 2nd MAY 2024
(IN CHAMBER)

P. C.:

1. Heard Mr. Kawchale, learned Counsel for the Applicant and Ms. Yadav, learned APP for the Respondent No.1-State.
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.	322 of 2020
2.	Date of registration of F.I.R.	22/08/2020
3.	Name of Police Station	Chikhali, District-Pune
4.	Sections invoked	376, 376(i), 376(n), 354-B of the IPC, 1860; 3, 4, 5, 7, 8, 9 of the POCSO Act, 2012.

5.	Date of incident	March 2020 to April 2020
6.	Date of arrest	22/08/2020
7.	Date of filing of Charge-sheet	08/10/2020

3. As per the prosecution case, the victim, who is a close relative of the Applicant was residing in the house of the Applicant. The Applicant was residing with his parents and his family consisting of his wife and two minor children. It is the case of the prosecution that the victim was residing with the Applicant since about 2 years before the incident took place. It is the prosecution case that due to COVID-19 pandemic, the Applicant's parents along with other family members went to the native place and the Applicant and his wife only resided there as at the relevant time the victim was in 10th Standard and although her rest of the examination was over, one paper was remaining and at that time, lock-down was imposed. It is the prosecution case that on 14th May 2020, wife of the Applicant left the house as there was some altercation between the Applicant and his wife. It is the prosecution case that the parents of the victim took victim to their residence in May-2020. However, during the said period of March-

2020 to May-2020, the Applicant sexually assaulted the victim on two occasions.

4. Mr. Kawchale, learned Counsel for the Applicant submitted that the Applicant is incarcerated since 22nd August 2020. Charge-sheet has been filed on 8th October 2020 and till date there is no progress in the trial. He submitted that the relationship was consensual and at that time, the victim was 16 years and 7 months and she was understanding the consequences of her actions. He submitted that in fact, mother of the victim and the victim have submitted an affidavit in Writ Petition (ST) No.19342 of 2023 which has been filed for quashing of the said complaint stating that the relationship was consensual. He submitted that in the said Writ Petition (ST) No.19342 of 2023 seeking quashing of F.I.R, a Division Bench of this Court has passed Order dated 19th December 2023 and adjourned the matter as the issue whether such proceedings can be quashed with consent of the complainant is presently pending before the Apex Court, however, the trial is stayed. He submitted that the Applicant is incarcerated since about 3 years and 9 months. He submitted that the Applicant has a

family consisting of his wife and two children aged 7 and 8 years. He therefore submitted that the Applicant be released on bail.

5. Mr. Mishra, learned Counsel for the Respondent No.2 states that the victim and her mother are personally present in Court and they are consenting for granting bail to the Applicant. He pointed out affidavit dated 18th December 2023 of the victim as well as her mother. He pointed out paragraph No.6 of the said affidavit and submitted that the relationship between the Applicant and the victim was consensual. As the victim and her mother are personally present in Court, I kept the matter in the afternoon session in Chamber and verified the facts stated in the affidavit. The victim has stated that there was a consensual relationship with the Applicant. The victim is presently pursuing a Civil Engineering course.

6. On the other hand, Ms. Yadav learned APP for the Respondent-State strongly opposed the Bail Application. She submitted that at the relevant time the age of the victim was 16 years and 7 months. She further submitted that the D.N.A. report shows a positive match and therefore, Bail Application be rejected.

7. Perusal of the record shows that in the present case, F.I.R. was lodged on 22nd August 2020, the Applicant was arrested on 22nd August 2020 and Charge-sheet was filed on 8th October 2020. There is no progress in the trial. A Division Bench of this Court by Order dated 19th December 2023 passed in Writ Petition (ST) No.19342 of 2023 has stayed the trial. Accordingly, the trial is unlikely to conclude any time soon and is likely to take a considerably long time.

8. At the relevant time, the victim was 16 years and 7 months. The victim was understanding the consequences of her actions. She stated that the relations were consensual.

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

10. The Applicant is having family consisting of his wife and two minor children aged 7 and 8 years.

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

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

13. In view thereof, the following order:

ORDER

- (a) The Applicant - Vijay Jagannath Kamble be released on bail in connection with C.R. No.322 of 2020 registered with the Chikhali Police Station, District - Pune on his furnishing P.R. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.
- (b) 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.
- (c) The Applicant shall report to the Chikhali Police Station, District - Pune once in a month i.e. on first Sunday of every month between 11:00 a.m. and 1:00 p.m. until the conclusion of the trial.
- (d) 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.

- (e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

14. The Bail Application is disposed of accordingly.

15. 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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