

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

Criminal Bail Application No.1851 of 2023

Harish Dhanaji Galiyal

Age: about 24 years,

Male.Occ.:Job

Residing at : Nira, Po: Nira

Tal: Purandar, Dist.Pune

(Presently lodged in Taloja Jail) ... Applicant.

Versus

The State of Maharashtra

Through Police Inspector,

Kolsewadi Police Station, Kalyan. ... Respondent.

...
Ms Stefy Dias, Legal Aid appointed Advocate for the
applicant.

Mr Arfan Sait a/w Mr Kiran C.Shinde, APP for the
respondent/State.

Coram : R. N. Laddha, J.

Date : 2 May 2024.

P.C. :

Heard Ms Stefy Dias, learned Counsel appearing on
behalf of the applicant and Mr Arfan Sait, learned APP for the
State.

2. By this application, the applicant is seeking bail in connection with CR No.80 of 2020 registered at Kolsewadi Police Station, Kalyan, for the offence punishable under Sections 363, 376(4)(3) of the Indian Penal Code, and Sections 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act').

3. The applicant is accused of abducting a minor girl, aged about 12 years 4 months. He allegedly took her to various places between 20.02.2020 and 17.03.2020, and engaged in a sexual relationship with her. The applicant's bail applications were rejected by the Special Judge under the POCSO Act.

4. Mr Stefy Dias, learned Counsel for the applicant submits that the applicant and the victim were having an affair. However, the victim's father disapproved of their relationship and lodged a false FIR. The applicant was arrested on 18.03.2020, and the chargesheet was filed on 14.05.2020. The learned Counsel contends that despite the applicant being in custody for over four years, the prosecution has not examined any witness. Additionally, there is no risk of the applicant fleeing or tampering with witnesses, and granting

bail would not lead to misuse of liberty.

5. Mr Arfan Sait, learned APP submits that the offence is serious. The victim was a minor aged about 12 years 4 months at the time of the incident. Despite knowing that the victim was underage, the accused abducted and engaged in physical relations with her.

6. This Court has perused the application, charge sheet and accompanying documents. It reveals from the record that the victim was indeed 12 years 4 months old at the time of incident. The argument that the victim voluntarily accompanied the applicant holds no weight, as her consent is immaterial. In ***'X (Minor) vs. The State of Jharkhand and Anr.***¹ it was observed as under :

“ ----- Once, prima facie, it appears from the material before the Court that the appellant was barely 13 years of age on the date when the alleged offence took place, both the grounds, namely that ‘ there was a love affair between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which

1 Cri.Appeal No.263 of 2022.

prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO.”

7. Furthermore, there is sufficient material connecting the applicant to the present crime. In view thereof, no case for grant of bail is made out. As such, the bail application is rejected.

8. In the facts and circumstances, the trial court is requested to expedite the trial and conclude it preferably within six months from the receipt of this order.

[R. N. Laddha, J.]