

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2304 OF 2022

SANTOSH
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KULKARNI

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Arjun Ashok Kumar Verma ...Applicant

Versus

The State of Maharashtra and anr. ...Respondents

WITH

INTERIM APPLICATION NO. 3118 OF 2023

Ms. Priyanka Chavan, for the Applicant.

Mr. Shailesh Ghag, APP for the State/Respondent.

Ms. Surbhi Agrawal, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED: 6th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Special Case No.573 of 2021 arising out of CR No.68 of 2021 registered with Vartak Nagar Police Station, Thane, for the offences punishable under Sections 376(2)(N), 363, 366 and 354 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO").
3. The indictment against the applicant is that the applicant had enticed away a 16 year old child - respondent No.2, and subjected her to aggravated penetrative sexual

assault. The learned Counsel for the applicant submitted that initially the allegations of sexual intercourse were not made. The allegations of sexual assault only were made. Subsequently, the victim has alleged that she was sexually exploited.

4. I have perused the material on record especially the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code"). In the said statement, the victim has stated that the applicant and the victim resided together for about two and half months at Mangalore and there were physical relations between them. In view of the aforesaid statement, at this stage, it would be difficult to accede to the submission that there is discrepancy in the version of the victim regarding sexual exploitation.

5. Indeed the victim had stated that she was in a relationship with the applicant and the sexual intercourse was with her consent. However, having regard to the age of the victim at the time of the alleged occurrence, the said statement does not inure to the benefit of the applicant.

6. What essentially impairs the claim for bail is the antecedents of the applicant. As many as 31 crimes have allegedly been registered against the applicant. Majority of

the crimes are in respect of the offences against body and property. Couple of offences of sexual assault have also been registered against the applicant. In the aforesaid view of the matter, the Court is not persuaded to exercise the discretion in favour of the applicant.

7. The learned Counsel for respondent No.2 submitted that respondent No.2 could not be found at her residence and the parents have stated that respondent No.2 is not residing with them. That may drag the trial. Thus, as the applicant has been in custody since 3rd June, 2021, it may be expedient to request the Special Court to expeditiously conclude the trial in the Special Case.

8. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) The learned Special Judge seized with Special Case No.573 of 2021 arising out of CR No.68 of 2021 registered with Vartak Nagar Police Station, Thane, is requested to conclude the trial in Special Case as expeditiously as possible and, preferably, within a period of eight months from the date of the communication of this order.

- (iii) In the event the trial is not concluded within the said period, the applicant shall have liberty to revive the prayer for bail before this Court.
- (iv) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the 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.

In view of disposal of the application, Interim Application does not survive and stands disposed.

[N. J. JAMADAR, J.]