

Shailaja

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

CRIMINAL BAIL APPLICATION NO.2618 OF 2022

Rahul Nanhelal Yadav	]	Applicant
Vs.		
The State of Maharashtra and another	]	Respondents

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Mr. Rahul Karnik, for Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent No.1 – State.

Ms. Dhanashree Bhate i/b Mr. Sagar Ambedkar, Appointed Advocate for Respondent No.2.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 18th APRIL, 2024.
PRONOUNCED ON: 22nd APRIL, 2024.

ORDER:

1. This is an application for bail. Applicant is behind bars in connection with C.R. No.60 of 2021 registered with *Aarey* Police Station, *Mumbai* for the offences punishable under Sections 363 and 376 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Complainant is the father of the victim. The victim was 17 years old at the time of the incident. She was staying at

Bhagvatipur, District Sultanpur, Uttar Pradesh with her grand parents. Since complainant's wife was unwell, victim was called in order to assist her mother in the household work.

3. On 26th February, 2021, victim left her house who was doing some sundry job at Oberoi Mall. She did not return in the evening till 8.00 p.m. The complainant searched for her. However, when he could not found her out, he approached *Aarey* Police Station and lodged a report. Subsequently, the victim was traced at *Lucknow, Uttar Pradesh*. The victim narrated the episode as to how she was kidnapped by the applicant from her lawful guardianship and also subjected to rape. The applicant could be arrested only after locating him on the basis of the Call Data Record of his mobile from *Lucknow*. Investigating Officer recorded the statement of the victim, the complainant and other witnesses. The victim was referred for medical examination. Her School Leaving Certificate was obtained in order to confirm her date of birth. Her statement was also recorded under Section 164 of the Code of Criminal Procedure by the learned Metropolitan Magistrate, 42nd *Shindewadi, Mumbai*. After investigation, a charge-sheet has been filed.

4. Having failed to secure bail in first attempt, the applicant approached this Court.

5. I heard Mr. Karnik, learned Counsel for the applicant, Mr. Palkar, learned A.P.P and Mr. Ambedkar, learned Counsel for respondent No.2 – victim.

6. Mr. Karnik would argue that it is a love affair and the victim and the applicant had consensual sex. He would further submit that the victim was about turn eighteen and, therefore, the applicant is entitled to be released on bail. He would invite my attention to the statement of the victim recorded under Section 164 of the Cr. P.C wherein she had categorically stated that marriage was solemnized with the applicant in a temple on 26th February, 2021. Counsel would further argue that the applicant is entitled to be released on bail also in view of his long incarceration and non framing of charge by the Trial Court till date.

7. On the other hand, learned A.P.P invites my attention to the statement of the victim recorded before the Police as well as by the Magistrate from which it is evident that the victim was seduced by

the applicant and had committed forcible sexual intercourse with her under the pretext of marriage. He, therefore, objected to grant bail.

8. Admittedly, relations between the applicant and the victim were consensual who were in love as is evident from her statement recorded by the Police as well as by the Magistrate under section 164 of the Cr.P.C. Statement of the victim reveals that she fell in love with the applicant way back in 2019 when she used to attend a class at *Vidya Mandir* at *Lucknow*, U.P where the applicant was serving. Initially, they befriended with one another and subsequently fell in love. When the victim was brought to *Mumbai* by her father due to the ill health of her mother, it was the victim who called the applicant from *Lucknow* to *Mumbai*. Subsequently, she lied with her parents that she was going for her work but, thereafter, she eloped with the applicant. The victim had also a quarrel with her mother as she did not give satisfactory reply to her mother in respect of her salary for two months. After eloping with the applicant, both started residing at *Hasaratganj* in a rented room. They performed marriage in a temple.

9. Considering the peculiar facts and also the age of the victim whose date of birth is 8th July, 2003, meaning thereby, on the date of the alleged offence, she was seventeen years, seven months and eighteen days old – five months to attain majority, the arguments of Mr. Karnik holds some substance. The applicant has been incarcerated ever since his arrest on 29th July, 2021. Charge has not yet been framed. There is no likelihood of concluding the trial in near future. Having taken into account the consensual relations between the applicant and the victim, age of the victim and the fact that the victim has now attained majority, no purpose would be served in continuing pre-trial detention of the applicant. I am, therefore, persuaded to release him on bail.

10. Now, to the order.

: ORDER :

(a) The application is allowed.

(b) The applicant – Rahul Nanhelal Yadav be released upon executing a P.R bond in the sum of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the Special Court in connection

with Sessions Case No.370 of 2021 arising out of C.R. No.60 of 2021 registered with *Aarey* Police Station, *Mumbai*.

(c) The applicant shall attend the concerned Police Station once in a month on first Monday between 10.00 a.m and 12.00 p.m till charge is framed.

(d) After framing the charge, the applicant shall attend the trial Court on each date scrupulously.

(e) The applicant shall not leave jurisdiction of the trial Court until 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 him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with the evidence.

(g) The applicant shall furnish his permanent address and contact to the *Aarey* Police Station, *Mumbai*. In case of any change, the same shall be forthwith communicated to the *Aarey* Police Station, Mumbai.

(h) The applicant shall surrender his passport, if he has, with *Aarey* Police Station, *Mumbai* forthwith.

(i) Needless to say that breach of any of the conditions would entitle the prosecution to pray for cancellation of bail.

11. Application stands disposed of.

12. At this stage, learned Counsel for the applicant prays for releasing the applicant on cash security. The applicant be released on furnishing cash security in the sum of Rs.20,000/- for a period of three weeks.

[PRITHVIRAJ K. CHAVAN, J.]