

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3732 OF 2023

Ajaj @ Ejaj @ Imran Ismail Khan ...Applicant

vs.

The State of Maharashtra and Anr. ...Respondents

Mr. Aniket Pardeshi, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Mr. Mehul Jain, for Respondent No. 2.

Mr. Dattatreya Sonwalkar, API, Uttan police station.

CORAM : N. J. JAMADAR, J.

DATE : MAY 07, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 81 of 2019 registered with Uttan Sagari police station, Dist. Thane for the offences punishable under sections 363, 376 and 377 of Indian Penal Code, 1860 and section 4 and 8 of the Protection of Children from Sexual Offences Act (POCSO), 2012, seeks to be enlarged on bail.
3. The victim, then 15 years and 5 months of age was studying in 9th standard. On 2nd August, 2019 as the victim had a quarrel with her mother, she left her home. She went to Nalasopara station to meet her friend. She returned to Bhayandar station and thereafter stayed with a person. On the next day at about 1.30 am while she was staying on the sky-walk at Bhayandar station, the applicant

met her. The applicant took her to his room where the elder brother and nephew of the applicant were also residing. On 5th August, 2019, in the afternoon, when the elder brother and nephew of the applicant had gone for work, the applicant allegedly sexually exploited the victim. The applicant allegedly had aggravated penetrative sexual assault. The victim stayed with the applicant till 7th August, 2019. There was allegedly penetrative sexual exploitation.

4. The learned counsel for the applicant submitted that the victim had stayed with the applicant out of her own volition. Though she was 15 and half years of age, she had sufficient maturity of understanding to know the nature and consequences of the act. The physical relations were consensual. It was further submitted that the applicant has been in custody since 11th August, 2019 and yet charge has not been framed. Therefore on account of long period of incarceration, the applicant be enlarged on bail.

5. The learned APP and the learned counsel for respondent No. 2 resisted the prayer for bail.

6. I have perused the report under section 173 of the Code of Criminal Procedure, 1973, especially the statement of the victim and the medico legal examination report. The medico legal examination report prima facie lends credence to the version of the

victim. The submission that the victim had stayed with the applicant out of her own volition and physical relations are consensual is of no avail to the applicant as the victim was 15 ½ years of age. The said submission loses sight of the fact that it was not a case of romantic relationship between the victim and the applicant. Evidently, the applicant had become acquainted with the victim a day prior to the alleged occurrence. In this backdrop, a strong prima facie case has been made out against the applicant.

7. The learned counsel for the applicant made an endeavour to rely upon an order passed by the **Madhya Pradesh High Court** in the case of **Rakesh Ambaram v. State of M.P. in MCRC No. 41304 of 2021 dated 9th September, 2021**, to draw home the point that the victim had sufficient maturity of understanding and therefore bail can be granted to the applicant.

8. I have perused the observations in paragraph 6 of the said order. In that case, the victim continued to stay with the applicant, and even gave birth to a child. Prima facie, the case therein appeared to have arisen out of a romantic relationship between the parties. Facts of the case of hand are quite distinct.

9. In the backdrop of the nature of the accusation, I am not inclined to exercise discretion in favour of the applicant. The submission on behalf of the applicant that the applicant has been in

custody since 11th August, 2019 and charge has not been framed, however, merits consideration.

10. In the circumstances of the case, it may be expedient to request the learned Special Judge seized with the Special Case No. 346 of 2019, arising out of C.R. No.81 of 2019 to make an endeavour to commence and conclude the trial as expeditiously as possible and preferably within a period of one year from the date of the communication of this order.

Application disposed.

(N. J. JAMADAR, J.)