

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

BAIL APPLICATION NO. 391 OF 2024

Sonu Devrao Jadhav	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Ms. Roohita Shaikh i/by Javed Shaikh for the Applicant.
Mr. Tanveer Khan, APP for Respondent-State.
Ms. Kanchan Pawar for Respondent No.2.
Mr. Sumit Kendre, PSI, Rabale Police Station, Navi Mumbai.

**CORAM: MANISH PITALE, J.
DATE : 4th SEPTEMBER 2024**

P.C. :

. Heard learned counsel for the applicant, learned APP for the respondent-State and the learned counsel appointed to appear on behalf of the victim.

2. The applicant was arrested on 5th June 2023 in connection with FIR No. 0168 of 2023 dated 6th April 2023 registered at Rabale Police Station, Navi Mumbai, initially for offence under Section 363 of the Indian Penal Code, 1860 (IPC). The mother of the victim is the informant and she lodged the report when the victim went missing. Eventually, the applicant was arrested on 5th June 2023, when the statement of the victim was recorded on the same date and further offences under Sections 376(3) and 376(2) (n) of the IPC and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) were

added. The investigation was completed and charge-sheet was filed. The applicant has remained behind bars since 5th June 2023, for a period of about 1 year and 3 months.

3. The learned counsel for the applicant referred to the material on record, particularly the statement of the victim herself. It is emphasized that victim at the time of the incident was already 17 ½ years old i.e. she was on verge of attaining the age of majority and that she was well aware about the consequences of her actions. Attention of this Court is invited to certain photographs placed on record. It is claimed that after the victim voluntarily joined the company of the applicant and in the backdrop of love affair between them, marriage was also performed between the two. It was submitted that the applicant has already suffered incarceration for more than 1 year and looking to the peculiar facts and circumstances of the present case, this Court may consider enlarging the applicant on bail.

4. On the other hand, the learned APP submitted that the victim has specifically given details as to when the applicant had forcible sexual intercourse with her. The statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is also relied upon to contend that the victim is being consistent in her allegation. It was submitted that since the victim was a minor at the relevant point in time, consent or consensual relationship is irrelevant. It was submitted that since the ingredients of the offences are clearly made out, which include

serious offences under the POCSO Act, the application deserves to be dismissed.

5. The learned counsel appointed to appear on behalf of the victim submitted that the aforesaid stand, about marriage having been performed between the applicant and the victim, was not taken while seeking bail from the Sessions Court. This was a theory propounded for the first time before this Court. It is submitted that the victim being a minor, consent is irrelevant in the facts and circumstances of the present case.

6. This Court has considered the rival submissions. The statement of the victim recorded on 5th June 2023, is significant. It shows that even according to the victim, on 5th April 2023, she herself voluntarily left her house, giving an impression to her mother that she was carrying relevant documents for the purposes of caste verification being undertaken in the college. After having given the aforesaid excuse to her mother, the victim joined the company of the applicant. The statement of the victim shows that after she got in touch with the applicant on *WhatsApp*, they were attracted towards each other and the applicant showed interest in marrying her. Thereafter, it is alleged that when the victim joined the company of the applicant, he took her to various places, but the specific allegation pertaining to forcible sexual intercourse, pertains to the dates between 17th May 2023 and 30th May 2023. This was more than a month after the victim had voluntarily joined the company of the applicant. The statement further reveals

that on 4th June 2023, the father of the victim reached along with the Police and the victim as well as the applicant were taken from the aforesaid place. Thereupon, the statement of the victim was recorded.

7. Considering the date of birth of the victim being 6th November 2005, at the time the victim voluntarily joined the company of the applicant, she was about 17 years and 4 months old and at the point in time when the applicant allegedly committed forcible sexual intercourse with her, she was about 17 years and 6 months old. Obviously, she was at the verge of attaining the age of majority. This is not a case where the victim was a minor girl in the range of 6 years to 16 years of age. The victim was already in college and considering the exposure that teenagers at this day and age have, particularly the influence of social media, it can be said that the victim was certainly aware about the consequences of her actions. It is not even alleged by the victim that she was induced by the applicant into joining his company in April 2023. In fact, her statement indicates that she herself gave an excuse to her own mother, while leaving her house with certain documents and voluntarily joining the company of the applicant. This is a significant factor, which cannot be ignored in the peculiar facts and circumstances of the present case.

8. Although, it appears that the contention regarding marriage performed between the victim and the applicant, is not taken at any point earlier, with the present application, the applicant has

placed on record photographs, indicating marriage ceremony having been performed. Undoubtedly, the said aspect of the matter would be tested at the time of trial, but such material can be taken into consideration while examining the rival submissions, particularly for the reason that the victim at the relevant time was on the verge of attaining the age of majority.

9. *Prima facie*, it appears that when the victim was eventually caught by her father along with the Police team on 4th June 2023, that she gave the aforesaid statement on 5th June 2023 about the applicant having forced himself on her. In fact, in her statement, the victim claimed that the applicant committed the aforesaid acts between 17th May 2023 and 30th May 2023 and yet, there is nothing to indicate that the victim made any efforts to escape the clutches of the applicant, till she was eventually found by her father along with the Police team on 4th June 2023. These are relevant circumstances for considering the present application, as this cannot be said to be a case where the applicant/accused either induced the victim through false promise of marriage or he was, in any manner, blackmailing or threatening the victim to indulge in sexual intercourse with him. This case *prima facie* appears to be a case of attraction and love affair between the victim and the applicant, which led to the victim joining the company of the applicant voluntarily and thereupon, after being caught by her father along with the Police team, she made certain allegations of forcible sexual intercourse against the applicant.

10. The applicant has already suffered incarceration for about more than 1 year. In the light of the observations made hereinabove, this Court is inclined to allow the present application.

11. Accordingly, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. 0168 of 2023 dated 6th April 2023 registered at Rabale Police Station, Navi Mumbai, on furnishing P.R. Bond of ₹25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall attend the trial Court on each and every date, unless specifically exempted by the trial Court, for the reasons to be recorded in writing.
- (c) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

12. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

13. The application is disposed of.

MANISH PITALE, J.