

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

CRIMINAL BAIL APPLICATION NO. 519 OF 2024

Swapnil Subash Kudale

...Applicant

Vs.

The State of Maharashtra and Others

...Respondents

Ms. Anjali Patil with Tohid Shaikh, Advocate for Applicant.

Ms. Tejas J. Kapre, Advocate for Respondent No. 2.

Mrs. Geeta P. Mulekar, APP for State-Respondent.

CORAM:- ANIL S. KILOR, J.

DATED:- 7th AUGUST, 2024

PC:-

1) Heard.

2) By this application under Section 439 of the Code of Criminal Procedure, the applicant is seeking bail in Crime No. 584 of 2022 registered with Hadapsar Police Station, Dist. Pune, for the offences punishable under Sections 363, 366, 376 and 376 (2)(n)(j) of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012.

3) The learned Counsel for the applicant submits that there was a love affair and the victim used to make WhatsApp chats with the applicant. It is submitted that the applicant is in jail from more than two years. It is submitted that the charge-sheet has been filed and since the investigation is completed, further custody of the applicant is not necessary. Accordingly, she prays for grant of bail.

4) The learned APP, on the other hand, strongly opposed the application. It is submitted that the offence is not only under the provisions of POCSO but it is also the case of kidnapping, taking the minor out of the custody of the parents without their permission. She accordingly prays for rejection of the present application.

5) The learned Counsel for the victim strongly opposed the application, and it is submitted that since the proposal of the marriage given by the parents of the applicant to the parents of the victim was refused by the parents of the victim, to take revenge, the alleged offence was committed by the applicant. It is submitted that the medical examination supports the case of the prosecution, and as such, she prays for dismissal of the present application.

6) Having gone through the charge-sheet and the relevant material available on record, it appears that there was a love affair and a threat was given by the applicant that he would commit suicide if the victim did not accompany him.

7) The applicant is in jail for almost two years and in the meantime, the charge-sheet has been filed on completion of the investigation. The medical examination was conducted after five days of the alleged incidence. In the medical examination, the doctor who examined the

victim, opined as regards the hymen that multiple old healed hymenal tears and no recent physical injury was found on the person of the victim.

8) As far as the status of the trial is concerned, till the charge is not framed, and as such, considering the pace with which the trial is proceeding, there is un-likelihood that the trial will be concluded in the near future. In the circumstances, I am of the opinion that the applicant is entitled for grant of bail.

9) As far as the apprehension expressed by the respondent No. 2, if the if the applicant is released on bail, he may pressurize the witnesses and tamper with the prosecution evidence is concerned, the same can be addressed by putting certain stringent conditions.

ORDER

- i. The Bail Application is allowed;
- ii. It is directed that the Applicant shall be released on bail in Crime No. 584 of 2022 registered with Hadapsar Police Station, Dist. Pune, for the offences punishable under Sections 363, 366, 376 and 376 (2)(n)(j) of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012, on furnishing PR. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;
- iii The applicant shall not enter into the territorial jurisdiction of Pune City till the conclusion of the trial except on the date of trial;

- iv. The applicant shall provide his address and name of the nearby police station to the I.O, which he shall attend the said Police Station on 16th day of every month between 10.00 am to 12.00 noon., till the conclusion of the trial except on the date of trial;
- v. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- vi. Liberty is granted to the State to apply cancellation of bail if the applicant commits similar offence.;
- vii. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.
- viii. Application stands disposed of, accordingly.

Fees of the appointed Advocate Ms. Tejas J. Kapre, to be quantified as per the Rules.

[ANIL S. KILOR, J.]