

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

BAIL APPLICATION NO. 891 OF 2024

Afroz Ali Fayaz Ali Shaikh

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

- Mr. A.S. Sayyed, for Applicant.
- Mr. Tanveer Khan, APP for Respondent.
- Mr. Afsar Ansari, for Respondent No.2
- Mr. Warpade, API, D.N. Nagar Police Station.

CORAM : MANISH PITALE, J.

DATE : 20th August, 2024.

P. C. :

1. Heard, Mr. Sayyed, learned counsel for the applicant and Mr. Khan, learned APP for the State, as well as Mr. Ansari, learned counsel having instructions to appear on behalf of respondent No.2.

2. The applicant was arrested on 09.12.2021 in connection with First Information Report No.0760 of 2021, dated 09.12.2021, registered at Police Station D.N. Nagar, Mumbai, for offences under Section 376, 376(2) (n) of the Indian Penal Code (IPC) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The victim in the present case, at the time of the registration of the FIR, was 16 years old. She has stated in her statement before the investigating authority that friendship developed between her and the

SHRIKANT
SHRINIVAS
MALANI

Digitally signed by
SHRIKANT
SHRINIVAS
MALANI
Date: 2024.08.21
10:45:48 +0530

applicant, which subsequently became a romantic engagement between the two. At the relevant time the applicant was himself 19 years old.

4. The learned counsel for the applicant has invited attention of this Court to the statement given by the victim, as also medical history recorded by the Doctor when medical examination was undertaken. In the medical history also the victim specifically stated that the applicant and the victim were in a relationship with each other and that they had mutually indulged in consensual sexual activity.

5. The learned counsel for the applicant relied upon judgments of this Court in the cases of Sunil Mahadev Patil vs. The State of Maharashtra (order dated 03.08.2015 passed in Bail Application No.1036 of 2015), Mr. Vinayak Dnyandev Gore Vs. The State of Maharashtra & Anr. (order dated 07.01.2022 passed in Criminal Bail Application No.3460 of 2021) and Imran Iqbal Shaikh vs. The State of Maharashtra Anr. (order dated 26.04.2023 passed in Bail Application No.997 of 2022), to contend that even in the present case since the applicant was only 19 years old at the time of the incident, this Court may show leniency in the matter. It is also brought to the notice of this Court that respondent No.2 has now filed an affidavit in the present proceedings giving her consent for granting bail. It is brought to the notice of this Court that the victim is now residing at Pune.

6. The learned APP submits that the statement of the victim, leading to registration of the FIR, does make out the ingredients of the alleged offences, particularly because the victim was 16 years old at the time of the incident and consent is immaterial in such cases.

7. This Court has considered the material on record. It appears that at the time when the FIR was registered, the victim was about 16 years old and the applicant was about 19 years old. This Court in few cases has taken note of such situations where the victim is still a minor while the accused is himself a young boy, just above the age of majority and the two of them are in a relationship when the FIR is registered. This Court has taken judicial notice of the exposure that the teenagers have during this day and age. In the case of **Sunil Mahadev Patil vs. The State of Maharashtra** (*supra*), this Court observed as follows :

“10. The offence of rape can be distinguished on the basis of the intention of the accused. There are incidents of rapes committed by gang like the case of Nirbhaya or Maya Thagi or Mathura which cannot be forgotten by Indian Society. So also rape committed in a savage manner or repeatedly by a single accused. There are some instances of rape which take place as a man wants to satisfy his lust and animal within him overpowers his reason. There are instances of rape where a man and a woman both are in love with each other and get involved into sexual

relationship due to either physical or psychological need and in such type of rape, there is no violence which exists in other types of rape.

11. *Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.*

12. *The overall considerations while deciding such*

applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.*
- (ii) Whether the act is violent or not.*
- (iii) Whether there are antecedents or not.*
- (iv) Whether the offender is capable of repeating the Act or not.*
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.*
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.*
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.”*

8. The said position of law is followed in subsequent orders passed in the cases of **Vinayak Dnyandev Gore Vs. The State of Maharashtra & Anr.** (*supra*) and **Imran Iqbal Shaikh vs. The State of Maharashtra Anr.** (*supra*).

9. In all the aforesaid cases, the accused person was just above the age of majority and this factor was taken into consideration, while disposing of the bail application.

10. In the present case, the applicant was aged about 19 years and even according to the victim, she was in a relationship with the applicant. In the medical history, she specifically stated that in this backdrop, they had indulged in consensual sexual activity.

11. There is no allegation of the applicant having inflicted, violent sexual activity on the victim in the present case. Although consent may not be relevant, for the reason that the victim was a minor aged about 16 years at the time of the incident, considering the overall circumstances of the present case and the approach adopted in similar circumstances by this Court in the above mentioned cases, this Court is inclined to allow the present application.

12. It is relevant to note that the victim, as on today, is a resident of Pune and she has also filed an affidavit of consent in the present application. It is also relevant to note that the applicant has suffered incarceration for about 3 years.

13. In view of the above, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with FIR No.0760 of 2021, dated 09.12.2021, registered at Police Station D.N. Nagar, Mumbai, for offences under

Section 376, 376(2)(n) of the Indian Penal Code (IPC) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on furnishing PR bond of ₹25,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.

- (B) The applicant shall not contact the informant in any manner, during the pendency of the trial.
- (C) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (D) The applicant shall cooperate with the investigation.

14. Needless to say, violation of any of the aforesaid conditions may result in this order being cancelled.. The Trial Court shall proceed further without being influenced by the observations made hereinabove.

15. The application is disposed of.

(MANISH PITALE, J.)