

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1602 OF 2024

Vishal Vikram Jadhav ... Applicant.

V/s.

The State of Maharashtra and Others ... Respondents.

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Mr. Prashant D. Patil, Advocate for the Applicant.

Mrs. Savita M. Yadav, APP for the State/Respondent.

Ms. Priya Dalvi, Advocate for Respondent No. 2.

Mr. S. A. Raut, PN, Yeola City Police Station, Present.

CORAM : ANIL S. KILOR, J.

DATE : 18th JUNE, 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.294 of 2023, registered with Yeola City Police Station, District: Nashik for the offences punishable under Sections 363, 376 (n)(2), 366A read with Section 34 of Indian Penal Code (for short 'IPC'), Section 3/4, 5 (l)/6, 16 and 17 of Protection of Children From Sexual Offences Act, 2012 (for Short, 'POCSO Act').

- 3) The learned Counsel for the applicant submits that there was a love affair and the victim stayed with the applicant for seven days. He submits that the medical evidence does not support the case of penetrative sexual relations as alleged by the victim. He submits that since the charge-sheet is filed after the completion of investigation, further custody of the applicant is not necessary.
- 4) The learned A.P.P., on the other hand, strongly opposed the application and submits that the victim was 15 years 10 months old on the day of incident, whereas the applicant was 29 years old. It is submitted that there is an ample material collected by the Investigating Officer to show prima facie involvement of the applicant with the alleged offence. It is submitted that the offence is very serious and, therefore, this Court may not grant bail to the applicant.
- 5) The learned Counsel for the victim reiterates submission of the learned A.P.P. and further submits that a threat was given by the applicant to the victim to make the photographs of the victim viral. She therefore submits that if the applicant is released on bail, he may pressurise the witnesses or tamper the evidence of the prosecution.
- 6) In the aforesaid backdrop, I have perused the charge-sheet. From the charge-sheet it is evident that the applicant is in jail for about 9 months. Though there are allegations of penetrative sexual relations during the period when the victim stayed with the applicant, the medical report prima

facie does not support the said allegation. From the WhatsApp chats filed on record, it appears that there was a love affair between the applicant and the victim.

- 7) In a similar matter, the Co-ordinate Bench of this Court in the case of *Nitin Damodar Dhaberao Vs. State of Maharashtra, Through Police Station Officer of Police Station and Another*¹, observed as under:-

“...6. Having heard learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as to the fact that applicant is arrested on 30.08.2020 and there is no progress in the trial though charge-sheet is filed on 26.10.2020. As far as merit is concerned, admittedly victim is of 13 years of age and her consent is not relevant. However, the statements which are recorded by the Investigation Officer shows that victim has left her house at her own accord on the pretext of bringing the book from friend and not returned back at home. She also joined the company of the present applicant and also admitted her love relationship with the present applicant in her statement. From her statement it reveals that, she stayed along with the present applicant at various places and not made any grievance as she was taken by the present applicant by using some force. Thus it is apparent that, out of the love affair, she joined the company of the present applicant. The applicant is also of a tender age of 26 years and out of love affair they come together. It seems that, the alleged incident of sexual relationship is out of the attraction between the two young persons

¹ 2024 SCC OnLine Bom 120

and it is not the case that applicant has subjected the victim for a sexual assault out of lust. Considering the fact that, though charge-sheet is filed long back in the year 2020 and there is no progress in the trial and trial will take its own time for final disposal. In view of that, further incarceration of the present applicant is not required and no purpose will be served by keeping him behind bar. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order...”

- 8) In view of the above referred observations and the fact that the charge-sheet has been filed, but there is no progress in trial, I am of the opinion that as further custody of the applicant is not necessary the applicant is entitled for bail. In the circumstances, I proceed to pass the following order:-

ORDER

(i) Bail Application is allowed.

(ii) It is directed that the applicant shall be released on bail in Crime No.294 of 2023, registered with Yeola City Police Station, District: Nashik for the offences punishable under Sections 363, 376 (n)(2), 366A read with Section 34 of Indian Penal Code, Section 3/4, 5 (l)/6, 16 and 17 of Protection of Children From Sexual Offences Act, 2012 on executing P.R.Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount;

(iii) 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;

iv) Applicant shall not enter into the territorial jurisdiction of District Nashik except for the trial till the conclusion of the trial.

v) Applicant shall provide the address of the name of the nearby police station which he shall attend 1st and 16th of each month between 12.00 noon to 2.00 pm till conclusion of the trial.

vi) Liberty is granted to the State for 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.

The Criminal Bail Application is disposed of accordingly.

(ANIL S. KILOR, J)