

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

ANTICIPATORY BAIL APPLICATION NO. 1711 OF 2024

Arjun Dattatray Shinde ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

Mr. Satyavrat Joshi a/w Ashish R. Kachole for the Applicant.
Mr. Babu V. Holambe-Patil, APP for Respondent No.1-State.

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

P.C. :

. Heard learned counsel for the applicant and learned APP for respondent-State.

2. The applicant is apprehending arrest in connection with FIR No. 0902 dated 29th December 2023 registered at Saswad Police Station, Pune, initially for offence under Section 363 of the Indian Penal Code, 1860 (IPC). Subsequently, the other offences were added.

3. At the outset, a question arose as to whether this application could be entertained, considering the fact that offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocity Act) were added against the applicant. His application for anticipatory bail was rejected by the Sessions Court by order dated 18th March 2024 and in that

backdrop a query was put as to whether an appeal under the provisions of the Atrocity Act would lie instead of the present application.

4. The learned counsel for the applicant has brought to the notice of this Court that the aforesaid question is already answered by this Court in the case of ***Suraj S. Paithankar v/s. State of Maharashtra, 2020 SCC OnLine Bom 11696***. This Court has already held that the Protection of Children From Sexual Offences Act, 2012 (POCSO Act) is a special enactment and it is also a subsequent enactment to the Atrocity Act and therefore, the provision of appeal will not operate. In that light, the learned counsel for the applicant and the learned APP for respondent-State were heard on the merits of the matter.

5. In the present case, the FIR stood registered on the basis of the statement given by the maternal uncle of the victim, stating that the victim could not be traced. On that basis, offence under Section 363 of the IPC was registered and subsequently, the victim was found and she gave a specific statement against the applicant to the effect that she got in touch with the applicant on a social media platform i.e. Instagram. The victim was 14 years and a few months old at the time of the incident. She is stated to have met the applicant for the first time on 26th December 2023, when the incident of forcible sexual intercourse took place. The victim further stated about two more incidents of 27th December 2023 and 28th December 2023. On the basis of the fact that the victim

belongs to a particular community, offences under the Atrocity Act were added and considering that the victim was only about 14 years and few months old at the time of the incident, the offences under the POCSO Act were also added. In view of the statement of the victim, offences under Sections 376, 376(3)(D)(A) and 376(2)(n) of the IPC and the provisions of the POCSO Act were also added.

6. The learned counsel for the applicant submits that the narration of the events indicates consent on the part of the victim and because the family of the victim appears to have been against the relationship, the FIR came to be registered. It is submitted that charge-sheet has been already filed and since the applicant is ready to remain present before the Investigating Officer, this Court may allow the present application.

7. On the other hand, the learned APP submitted that consent is irrelevant for the reason that the victim at the time of the incident was about 14 and $\frac{1}{2}$ years old and the applicant is a 25 years old grown up man. It is submitted that the applicant has remained absconding throughout and therefore, no indulgence may be shown.

8. This Court is of the opinion that the victim being only about 14 and $\frac{1}{2}$ years old at the time of the incident, consent is wholly irrelevant, the statement of the victim makes out a strong *prima facie* case against the applicant and therefore, no case is made out

for granting anticipatory bail. Merely because charge-sheet has been filed, the same cannot be a ground for showing any indulgence in favour of the applicant, who is a 25 years old man and he is alleged to have committed forcible sexual intercourse with a 14 and ½ years old girl.

9. The application is dismissed.

MANISH PITALE, J.