



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.543 OF 2024

(Vaibhav s/o Ranjan Pillewan Vs. The State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. I.G. Meshram, Advocate for the applicant.
Mr. S.V. Narale, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 9, 2024.

By this application, the applicant is seeking bail as he was arrested on 16/01/2024 in connection with Crime No.15/2024 registered with Police Station Sindewahi, District Chandrapur for the offence punishable under Sections 376 and 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of report lodged by the victim on an allegation that on 25/03/2023 when she was alone in the house at about 2.00 p.m., the co-accused came in her house and forcefully subjected her for sexual assault. Thereafter the present applicant has also visited her house on several occasions and on several occasions he has subjected her for sexual assault due to which she was pregnant. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that at the time of the incident, the victim was 16 years and 11 months i.e. on the verge of attaining the age of majority. The history narrated by her before the Medical Officer shows that there was a physical relationship between her and the applicant. Her statement recorded under Section 164 of Cr.PC. also shows that she was subjected for sexual assault however, she has not made complaint earlier to lodging of this report. He submitted that now the investigation is completed and charge-sheet is filed. In view of that, he be released on bail.

4. In support of his contention, he placed reliance on *Sunil Mahadev Patil Vs. The State of Maharashtra [2015 SCC Online Bom 6204]*, *Suraj S. Paithankar Vs. State of Maharashtra [2020 SCC OnLine Bom 11696]*, *Sushant Santosh Mane Vs. State of Maharashtra and anr. [2020 SCC Online Bom 10819]* and *Nitin Damodar Dhaberao Vs. State of Maharashtra [2024 SCC OnLine Bom 120]*. He submitted that in all these decisions the fact that there was a physical relationship between the victim and the accused was considered in the light that it was a usual case of a boy and girl having an affair and had a sexual relationship between them. He submitted that from the history narrated before the Medical Officer also it reveals that similarly the present applicant and the victim was having the physical

relationship out of love affair, and therefore, the crime is registered against the present applicant. He submitted that now the investigation is completed and charge-sheet is filed.

5. Learned APP strongly opposed the application on the ground that the victim was aged about 16 years and 11 months at the time of incident, therefore, her consent is not relevant. He further submitted that the consistent statement of the victim shows that she was subjected forcefully subjected for sexual assault by the present applicant on repeated occasions. The DNA report is yet to be received. If the applicant is released on bail there is every possibility of tampering of the witnesses. Hence, the application deserves to be rejected.

6. The victim has also filed her reply on record and she has consented for releasing the present applicant on bail.

7. I have heard learned Counsel for both the parties and considered the reply filed by the victim. As per the allegations in the FIR she was subjected for sexual assault by the present applicant as well as another co-accused by entering in her house when she was alone in the house. There was repeated physical relationship between the present applicant and the victim. As per her statement the last physical relations between them was in

August 2023 and previously also there was a sexual relationship between them. The reply filed by the victim is also considered wherein she has stated that the present applicant is the friend of her brother and the applicant is also a good friend of her and she has consented to release him on bail. From the history narrated before the Medical Officer it reveals that there was a friendship between the present applicant and the victim and out of that they had physical relationship with each other. Admittedly, the victim is on the verge of attaining the majority at the time of incident. As observed by this Court in the catena of decisions that when the sexual assault case is out of love affair or the friendship when two teenagers come together and had a physical relationship it should be considered differently. It is not a case wherein out of lust present applicant has subjected the victim for the sexual assault but out of a friendship they developed physical relationship and which resulted into the pregnancy of the victim. Now, the investigation is already completed and charge-sheet is filed. Considering the fact that it is not the case wherein the victim who was subjected for sexual assault out of lust and considering the fact that now the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required and no purpose would be served by keeping him behind bar. Hence, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Vaibhav s/o Ranjan Pillewan in connection with Crime No.15/2024 registered with Police Station Sindewahi, District Chandrapur for the offence punishable under Sections 376 and 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on executing PR. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(iv) The applicant shall not enter into the vicinity of village Navargaon, Taluka Sindewahi, District Chandrapur till culmination of the trial.

(v) The applicant shall furnish his address of his residence after releasing him on bail and shall furnish the names of his two relatives with their address proof before the trial Court.

(vi) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(vii) The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*