



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 ANTICIPATORY BAIL APPLICATION NO. 1433 OF 2024

ARYAN PRAKASH PAWAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. A. B. Chormal h/f. Mr. Vijay U. Panpatil

APP for Respondent/State: Mr. A. A. A. Khan

Advocate for Respondent No.2 : Ms. N. P. Paliwal (*Appointed*)

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 12th MARCH, 2025

PER COURT:

1. Heard learned counsel for the applicant, the learned APP for the respondent-State, so also, learned counsel for respondent no. 2 / Victim.

2. The applicant has approached this Court apprehending arrest in connection with Crime No.0110/2024, registered with Ramtirth Police Station, Taluka Biloli, District Nanded, for the offences punishable under Sections 363, 376(2)(n), 376(3) of the Indian Penal Code, 1860 & Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

3. In the instant case, respondent no.2 / victim at the time of offence was of 14 years and 4 months and the applicant, who is stated to be a *Thekedar* / Contractor is of 21 years age.

4. **Ms. N. P. Paliwal**, learned counsel appointed by this court to represent respondent no.2 / victim relies upon the order of the Hon'ble Supreme Court in the case of **X (Minor) Vs. State of Jharkhand and another, 2022 SCC OnLine 2373**, at para 6, has observed as under:

“6. The High Court was manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that “there was a love affair” between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO.”

5. This court in the case of **Sunil Mahadev Patil Vs. The State of Maharashtra, 2015 SCC OnLine Bom 6204**, at paragraphs no.8, 11 and 12 observed, as under:

“8. It is to be noted that the case of S. Varadarajan was decided in the year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon'ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan.

Now we come across such cases everyday. If a girl is a minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstance. Some trial Courts dealing with such Bail Applications, especially after Nirbhaya case, started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern.

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."

6. Considering the observations of the Hon'ble Supreme Court in the case of **X (Minor) Vs. State of Jharkhand and another** (*supra*), so also, considering the judgment of this court in the case of **Sunil Mahadev Patil Vs. The State of Maharashtra** (*supra*), this court would be reluctant to grant anticipatory bail to the accused under Sections 363, 376(2)(n), 376(3) of the Indian Penal Code, 1860 & Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, where the victim is below 15 years of age, more so, when the accused in the instant case is 21 years of age.

7. No case is made out for grant of anticipatory bail. The Anticipatory Bail Application stands dismissed.

8. Ms. N. P. Paliwal, learned counsel appointed to represent the cause of respondent no.2 / victim has ably assisted this court and shall be paid fees of Rs.10,000/-.

[ARUN R. PEDNEKER, J.]

marathe