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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.2305 OF 2024

Salman Chand Shaikh

Age: 24 years, Occu.: Labour,

R/o. Tuljapur, Tq. Paithan

Dist. Ch.Sambhaji Nagar

... Applicant

Versus

1. The State of Maharashtra

Through Officer In Charge-sheet

Police Station MIDC Ahmednagar

Dist. Ahmednagar.

2. XYZ

... Respondents

.....

Mr. Sunil B. Surse, Advocate for Applicant

Mr. V.M. Chate, APP for Respondent No.1

Mr. J.S.Jain, Advocate for Respondent No.2

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 FEBRUARY 2025

PRONOUNCED ON : 17 FEBRUARY 2025

PER COURT :-

1. Applicant seeks grant of regular bail on account of his arrest in Crime No.368 of 2024, registered at Paithan Police Station, District Chh. Sambhajinagar for offences punishable under Sections 64(2)(I)(M), 137(2), 3(5) and 87 of B.N.S. 2023 read with Sections 4 and 6 of POCSO Act.

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2. Learned counsel for applicant submitted that applicant is arrested in above crime on 21.09.2024, and as such, he is behind the bars since more than four months. He pointed out that, investigation is over and charge-sheet is also filed in November 2024 itself. He submitted that, in fact, there was love affair. That, though victim is said to be 16 years of age, there is no concrete proof of date of birth. That, victim herself eloped with applicant and moved to various places like Aurangabad, Pune and Mumbai without any resistance. He further pointed out that victim's evidence also does not support the prosecution case. That, there are no signs of injuries and even hymen is shown to be intact. He further pointed out that, victim herself has given statement that there was no untoward incidence with her or any force or sexual intercourse against her wish. That, informant mother has already filed affidavit stating that she has no objection for grant of bail, and copy of the same is placed on record. For all above reasons, learned counsel seeks applicant's enlargement on bail.

3. Learned APP opposed on the ground that date of birth of victim is 14.05.2000, and going by the day of occurrence, she was barely 16 years of age. Therefore, she being a minor, even if,

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there is consent and no complaint, no benefit would go to accused. That, there is no question of her consent. Learned APP pointed out that, victim was taken to various places. That, victim herself has given statement about having forceful sexual relations, and therefore, learned APP opposes any relief.

4. Learned counsel for the victim, pointing to the affidavit of informant-mother placed on record, submitted that victim has attained majority, and there was no physical intercourse with her daughter. That, being family relatives, it is decided to perform marriage of victim with applicant. The said affidavit of informant-mother is dated 28.01.2025.

5. Heard. Perused the papers. It is emerging that FIR is at the instance of mother, and she has reported police on 16.09.2024 that her daughter aged 16 years and 4 months was missing from the house, and it was suspected that present applicant had kidnapped her by alluring her. Subsequently, on 07.10.2024, mother again gave supplementary statement claiming that on 04.10.2024, her daughter informed that as the applicant used to take informant and her daughter in the Rickshaw for agricultural labour work, they got acquainted. Informant further stated that, victim informed her that their acquaintance grew in

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the love relations and twice the applicant took victim in the field and had sexual intercourse with her. When her mother was looking for a suitable groom for victim, she reported to the applicant and they both decided to elope, and accordingly, on 15.09.2024, victim left the house and they both went towards Navgaon Bus Stand, and then to Aurangabad, Pune and Mumbai and thereafter Ahmednagar. When they had come to Paithan, police took both, victim and applicant, at police station.

Again, statement of victim is recorded on 06.10.2024. She has stated that she was made to run from home, but there was no outraging or untoward incidence with her.

6. Therefore, though victims school admission extract is the sole document, and there being no birth certificate coupled with the statement of victim herself showing that she herself ran with the applicant, and moved to various places, and finally on being apprehended by police, she has given belated statement, and further also taking into account the very affidavit of informant-mother, and when nothing further is shown to be recovered or discovered at the instance of applicant, and he being behind bars since September 2024, prayers so raised are required to be granted. Hence, the following order:

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ORDER

- (i) Application is allowed.
- (ii) Applicant Salman Chand Shaikh be released on bail in connection with Crime No.368 of 2024, registered at Paithan Police Station, District Chh. Sambhajinagar, on executing Personal Bond of Rs.15,000/- with one surety in the like amount.
- (iii) Applicant shall not tamper prosecution evidence.

**ABHAY S. WAGHWASE,
JUDGE**

S P Rane