

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.48 OF 2024

Mohammed Irfan Mohammed Umar Choudhary .. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Tohid Shaikh, Advocate i/by Ms. Anjali Patil, Advocate for Applicant.
- Mr. Sukanta Anil Karmakar, APP for Respondent – State of Maharashtra.
- Ms. Aakansha Saxena, Advocate for Respondent No.2 (appointed through legal aid)

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2025

P.C.:

1. Heard Mr. Shaikh, learned Advocate for Applicant; Mr. Karmakar, learned APP for Respondent – State of Maharashtra and Ms. Saxena, learned Advocate for Respondent No.2 appointed through legal aid.

2. This is a Bail Application filed by Accused who has been arrested for offences punishable under Section 376(1)(2)(j)(n) of Indian Penal Code, 1860 (for short ‘IPC’) read with Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO’).

3. The Applicant was arrested on 10.09.2023. The First Informant is the mother of the victim who has lodged the First

Information Report (for short '**FIR**') appended at page No.20 of the Bail Application. The FIR states that the Accused aged 22 years then befriended the victim who was 16 years of age on Snapchat App (for short '**said App**') in the month of April – 2023. Thereafter the victim and the Accused regularly chatted with each other on the said App and in the month of July-2023, Accused visited the residence of the victim. The victim states that her mother i.e. the First Informant and her stepfather resides in Agripada, Mumbai whereas Accused is resident of Andheri. As informed by Mr. Shaikh, Accused has no antecedents. He has studied upto 12th Standard and worked as Air Conditioner technician at the then time.

4. According to the FIR, Accused met the victim twice in the month of July and twice in the month of August at her residence (house) in Agripada, Mumbai. After filing of the FIR, the victim was sent for medical examination. The report of the medical examination is appended to the Bail Application from page No.72 onwards. The history of her association with Accused as narrated by her and depicted in the medical report dated 10.09.2023 at 08.10 p.m. confirms the meeting of the victim and Accused during the above dates.

5. Though Mr. Karmakar would vehemently persuade me not to accept the statement that is recorded in the medical report given by the victim herself as according to him it would have no evidentiary

value, I am inclined to accept the same to corroborate the statement made in the FIR by First Informant and subsequent statement recorded under Section 164 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), five days later which is also placed before me by Mr. Karmakar. The narration given by victim herself states that she met the Accused at her home on four occasions on which date they had sexual intercourse. Reading of the statement on page No.76 affirms the above fact. Further reading of the statement also clearly affirms the fact that there is no history of any physical abuse by Accused on the victim and rather curiously it states that there is no history of taking any photos / videos. This statement is further objected to by Mr. Karmakar where he points out that there is forensic report which states that certain photographs were taken and when First Informant lodged the report read with statement recorded under Section 164 of Cr.P.C., it appears that the victim was induced into the act due to her explicit photographs.

6. On reading of FIR, statement under Section 164 of Cr.P.C. and medical evidence on record, the detailed statement of victim in the facts of the present case, I am *prima facie* of the opinion that this is a clear case of consensual relationship between victim and Accused. The evidence is in the form of chatting which took place between the parties between April and July-2023 and thereafter victim inviting the Accused to her house and both the parties thereafter having sexual

intercourse on four different occasions until August-2023. The FIR is lodged on 10.09.2023. Age of both, the victim and Accused are 16 ½ years and 22 years.

7. Though Mr. Karmakar as well as Ms. Saxena appointed to espouse the cause of Respondent No.2 – victim would both vehemently argue that victim is below 18 years old, she is to be considered as minor as per the definition of child and attraction of POCSO is a serious offence but in the facts of the present case, I do not feel so primarily because had it not been for the victim's younger sister who in fit of rage disclosed the fact of victim association with the Accused to her mother through her grandmother's phone, this relationship between victim and Accused would not have been unearthed. There is no doubt POCSO Act is attracted in the view of the age of victim below 18 years at the then time. Today the victim would be seventeen and half years old. Appropriate measures can undoubtedly be taken in so far as any apprehension expressed by victim is concerned.

8. Ms. Saxena, learned Advocate appointed by the Court to espouse and represent the cause of victim i.e. Respondent No.2 before me has placed before me decision of this Court, Goa Bench (Coram : M. S. Karnik, J.) in the case of *XXXX Vs. State of Goa and Ors.*¹ and has persuaded me to consider the said decision. She would submit that in that case, the facts are more or less identical, but she would

¹ MANU/MH/3015/2023.

undoubtedly concede that the age of victim and Accused are not similar. She would submit that offence being a serious offence, Accused cannot be released as it would be an imminent threat to the victim as well as her family. In the case cited before me, it is seen that victim was 14 years old and it was observed by the Children's Court that the victim though had sufficient knowledge and capacity to know the full imports of her actions it would still not have any bearing on the grant of bail. The facts in the case cited before me are not only different and distinguishable but therein the Accused was known to victim and as stated in the judgement he was referred to as "mamu" (maternal uncle).

9. The facts in the case before me are delineated hereinabove which persuade me to *prima facie* observe the consensual relationship between July and August which *prima facie* appears from the record of the case. Any apprehension expressed by victim shall undoubtedly be taken care of. Liberty to Accused in the above facts cannot be curtailed. He is granted bail. Hence, the following order:-

- (i) Applicant – Mohammed Irfan Mohammed Umar Choudhary, who is facing trial in Special Case No.1935 of 2023 pending on the file of Special Judge under POCSO Act, City Civil and Sessions Court, Greater Bombay, is ordered to be released on bail in the sum of Rs.25,000/- (Rs. Twenty Five Thousand

- only) with one surety of the like amount;
- (ii) Applicant shall report to the Investigating Officer at Agripada Police Station, once every month on the first Monday of the month between 10:00 a.m. to 12:00 p.m.;
 - (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for revocation of this order;
 - (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
 - (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
 - (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/ or change of residence or mobile details, if any, from time to time, as applicable;
 - (vii) In addition, the Applicant shall not make any attempts to re-associate with the victim girl in any manner either through a device or in-person; and
 - (viii) Any infraction of the conditions shall entail cancellation of

bail granted to the Applicant.

10. The aforesaid observations are *prima facie* on the basis of record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

11. In the above terms, Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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