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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 338 OF 2024

Omeir Mushtaqali Babi	..	Applicant
Versus		
State of Maharashtra and anr.	..	Respondents

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- Ms. Anjali Patil a/w Mr. Toshid Shaikh, Advocates for Applicant.
 - Mr. Mayur Sonavane, APP for State/Respondent No.1.
 - Mr. Omkar Mane, Advocate for Respondent No. 2
 - PI Ms. Savita D. Chavan, Pali Police Station, Raigad - Present
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 07, 2025

P. C.:

1. Heard Ms. Patil, Advocate for Applicant; Mr. Sonavane, APP for State and Mr. Mane, learned Advocate for Respondent No.2.

2. This Application is being heard by this Court since January 2024 when notice was issued to Respondents. In the order dated 29.07.2024, it is duly recorded that Respondent No.2 has been served and since she was not represented by an advocate, the Court directed the High Court Legal Services Committee to appoint an advocate from its panel to represent and espouse her cause. Accordingly, Mr. Omkar Mane was appointed as Legal Aid Counsel vide Appointment Order dated 02.08.2024. He has appeared and heard in the matter.

3. Bail Application is filed by Accused under Section 439 of Cr.P.C. in connection with C.R. No. 952 of 2022 registered with Tilaknagar Police Station for offences under Sections 376, 376(2)(n) and 377 of Indian Penal Code, 1860 (for short **"IPC"**) along with Sections 4,6,8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short **"POCSO"**).

4. Prosecution case is that Complainant/victim took admission in Standard XI and since she was a cricket player, she got acquainted with the Applicant who worked as a Cricket Coach in her Educational Institution. Both Applicant and Respondent No.2 knew each other since January, 2020, they became close and committed sexual intercourse on multiple occasions thereafter. According to prosecution, the Applicant gave Respondent No.2 'Unwanted-72' tablet on several occasions which she consumed.

5. It is only on 22.12.2022 that Respondent No.2 filed a complaint with the Director of her Educational Institution stating about harassment meted out to her by the Applicant. In that complaint she stated that she was involved sexually with him since the year 2020 when she was 16 years old as she was deeply influenced by him, as she blindly trusted him and he was her idol for cricket. In that complaint she has stated that she never objected about the physical intimacy of the Applicant as she used to feel good, she used to feel

special, she started liking the Applicant and she interacted with him on social media and on mobile phone calls. She has stated in her complaint that not only did she enjoy the attention but also really felt loved by him. She has stated that this relationship continued until November 2022.

6. Subsequently, when she came to know about another girl in her college sharing a similar experience with her, she was disturbed and filed the complaint.

7. It is seen that the Educational Institution forwarded her complaint to the Senior Inspector of Police, Tilaknagar for taking appropriate action and on that day itself the victim's statement was recorded. She has reiterated the contents of her complaint in her statement save and except not recording the fact that she was involved intimately and sexually with Applicant since the year 2020 when she was 16 years old. Rest of the contents and incidents are all recorded in her statement before the Police.

8. From the above, one thing is certain and clear that on the version of the Complainant's own case there is an unreasonable delay of more than two and half years between the first alleged act and registration of the Complaint.

9. One of the submission made by the learned APP and the Advocate for Respondent No.2, is that statement of other victim girls have been recorded. However those statements when seen, *prima facie* appear to suggest that their relationship was consensual and most importantly the victims in those cases are all above 18 years of age and hence the provisions of POCSO would not apply.

10. *Prima facie*, the statement of the victim in the present case shows that though she was under 18 years of age, she herself consented for sexual relations with the Applicant over a period of more than two and half years. The Applicant is having no prior antecedents, his credentials as a Cricket Coach and achievements are not only good but even appreciated by the Respondent no.2/victim herself. There is no element of force or abuse involved at any point of time or during any incident between the Applicant and the victim-Respondent No.2. The Applicant is incarcerated since 27.12.2022. Investigation is complete and charge-sheet is filed.

11. The record indicates that one of the victim girl's statement is contentious because she filed a complaint against the Investigating Officer for pressurizing her to give her statement and rather she has stated that she has not signed any statement and did not want to go for medical examination.

12. On perusal of record which includes the Chargesheet, it is seen that Respondent No.2 in the present case not only continued having physical relationship with the Applicant but also consumed 'Unwanted-72' capsules given by him so that she would not get impregnated. Thus, it is seen that though at the then time the Respondent No.2 was between the age of 16 and 18 years, she was quite aware and knowledgeable about the consequences of her actions. Moreover, perusal of the statement of Respondent No.2 is in itself indicative of the relationship being consensual.

13. In view of the above facts and after reading the FIR and Statements of the Respondent No.2 and the material placed in the Chargesheet, I am of of the opinion that this is clear case of consensual relationship between parties who were known to each other.

14. Attention is drawn to the guidelines laid down in the case of ***Mahesh Balkrishna Dandane v. State of Maharashtra***¹

15. In the present case, it is seen that the Complainant at the time of the first incident was 16 years old, her own statement delineated herein above states that she was having a consensual relationship for two and half years with the Applicant. This coupled with the fact that she was having complete knowledge of consuming the 'Unwanted-72'

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tablets given by the Applicant to avoid unwanted pregnancy clearly shows that she knew the import of all her actions. The relationship of the Applicant as her cricket coach and her idol and she consenting to all acts as described by her in her own statement clearly show her consent. I am of the considered view that *prima facie* it does not appear from the record that Complainant was either forced to keep sexual relationship or she was really induced to such an extent that she had no other option but to keep physical relationship with the Applicant-Accused. The Complainant herself confessed that she was in love with the Applicant, she is an educated girl and it shows that it was her conscious decision to keep such relations with the Applicant. Hence possibility of non-committal and consensual relationship cannot be denied.

16. Applicant has been in custody since 27.12.2022. Trial is not likely to commence in the near future. Applicant's presence can be secured by imposing appropriate conditions. Hence, the following order:-

16.1. Applicant – Omeir Mushtaqali Babi is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one surety of the like amount;

16.2. Applicant shall not live or work in the vicinity of the victim.

16.3. Applicant shall not make any attempts to contact the Complainant via any device viz; electronic, telephonic or any other means or personally.

16.4. Applicant shall not influence any witness or tamper with the evidence in any manner;

16.5. Applicant shall attend interrogation if called for by the Investigating Officer since chargesheet is already filed;

16.6. Applicant shall co-operate with the conduct of trial and attend the Trial Court on all hearing 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.

17. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

18. All concerned shall act on production of a server copy of the order and no authority shall insist on a certified copy of this order.

19. Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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