

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1718 OF 2024

Shibu Rashid Qureshi

.Applicant

vs.

The State of Maharashtra & ors.

.Respondents

Ms. Anjali Patil a/w. Mr. Tohid Shaikh, Advocate, for the Applicant

Mr. D. J. Haldankar, APP, for the Respondent – State

Mr. Arjun Sethi i/b. Mr. Eram Qureshi, Advocate, for Respondent No. 3
- victim

CORAM : MILIND N. JADHAV, J.

DATE : 03.01.2025

P. C.

1. Heard Ms. Patil, learned Advocate for the Applicant, Mr. Haldankar, learned APP for the Respondent – State and Mr. Sethi, learned Advocate for Respondent No. 3 – victim.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R. No. 333 of 2023 for the alleged offences punishable under Sections 363, 376, 376(2)(i)(n) of the Indian Penal Code, 1860 (for short 'IPC') and under Sections 4, 6, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

3. Ms. Patil, learned Advocate for the Applicant would submit that the Applicant is 24 years old. The Applicant and the victim resided in the neighbourhood of each other. He befriended the victim. The date of the incident in the present case is between 22.09.2023 and 01.10.2023. The Complainant is the victim's mother. The victim was 14 years and 5 months at the time of the incident. It is stated in the complaint that the victim left her parental home in Mumbai and on 22.09.2023, a complaint is lodged on the following date i. e. 23.09.2023. There is precursor to the filing of the complaint contained in the two specific incidents which are later on stated by the victim while recording her statement before the police authorities. According to the victim, the statement recorded and placed at page No. 156 onwards, she knew the Applicant and used to regularly be in touch with him. The prosecution itself as a matter of fact placed on record substantial material evidencing the above facts from page No. 47 onwards in the Application which is the entire call records of the whatsapp conversation and chats between the Applicant and the victim. According to the victim, five days prior to the incident of she leaving her house on 19.09.2023, her father saw her having a conversation with the Applicant outside their house. On that date, thereafter, the victim states that she was beaten by her father due to the said act.

Thereafter, the victim has stated that on 21.09.2023, her parents once again scolded her for talking with the Applicant previously due to which she was upset. On the following day i.e. 22.09.2023 at night she narrated the aforesaid incident to the Applicant and thereafter, both of them left together and she went with him to Rajkot which is the native place of Applicant. Because of the victim leaving the house, her mother/Complainant lodged a complaint. The record shows that when father of the victim became unwell, mother of the victim immediately contacted the Applicant on his mobile phone and informed him about this fact. This was done by the Complainant before 01.10.2023 as a result of which the Applicant and the victim both returned back to Mumbai and the Applicant dropped the victim at her home.

4. Ms. Patil, learned Advocate for the Applicant would submit that there is substantial material on record which can be evidenced from the Charge-sheet. This material pertains to the fact that both the Applicant and the victim were in a relationship despite she being below 18 years of age. Apart from the whatsapp chats which are placed on record from page Nos. 47 to 153 along with the Certificate under Section 65B of the Indian Evidence Act, 1872 which evidences the fact that Applicant and the victim were having a love affair. She would submit that the medical report corroborates the said fact. She has drawn my attention to the

medical report and persuaded me to read the same which is appended at page No. 199 onwards issued by the Lokmanya Tilak Municipal Medical College & General Hospital, Sion, Mumbai. She would submit that though indictment of the Applicant is under the aforementioned provisions of the IPC for forcible assault on the victim as also since the victim, being a minor, applicability of the POCSO Act is also mentioned. She would submit that the medical evidence coupled with electronic evidence placed on record would clearly evidence the fact that the Applicant and the victim have had multiple episodes unprotected consensual sexual intercourse. The statement of the victim given to the Medical officer is precise and clear on the aforesaid submissions made by Ms. Patil, learned Advocate for the Applicant as appended at page No. 206 of the Application.

5. Mr. Haldankar, learned APP for the Respondent – State would persuade me to see the statement of the victim at page No. 156 of the Application and would draw my attention to the certain statements made by her on page No. 158 of the Application alleging the aforesaid assault. He would submit that Charge-sheet has been filed and investigation has been completed. Considering the applicability of the POCSO Act, this is a serious case where the Bail Application of the Applicant should not be considered by this Court.

6. Mr. Sethi, learned Advocate i/b. Mr. Eram Qureshi appeared on behalf of Respondent No. 3 as instructed by the Complainant. Mr. Sethi, learned Advocate for Respondent No. 3 would submit that the victim has filed her affidavit of no objection dated 02.05.2024. He would submit that it is stated in the affidavit filed by the victim that the Applicant and the victim in all probability will get married and therefore, he persuades the Court to pass appropriate order as deemed fit in law. The aforesaid statement made by Mr. Sethi, learned Advocate for Respondent No. 3 appears to be correct, as it is recorded in the order rejecting the Application for grant of bail by the learned Sessions Court that the victim has represented and espoused her cause wherein the aforesaid statement is made and it is so recorded in paragraph No. 5 of the Order dated 13.12.2023. Ms. Patil, learned Advocate for the Applicant has placed reliance on the guidelines framed by this Court in the case of *Sunil Mahadev Patil vs. State of Maharashtra* in *B. A. No. 1036 of 2015* laying down guidelines in the case of consensual sex and more specifically when age of the victim is below 18 years.

7. In the present case, the victim was 14 years and 5 months old at the time of the incident. Today, she will be around 16 years and 8 months old. Though there is no doubt about it, Mr. Haldankar, learned APP for the Respondent – State would submit that age of the victim at

the time of the crime/commission of offence should be considered.

8. In the present case, in view of my observations and findings stated herein above which are *prima facie* corroborated by the medical evidence on record as also the statement of the victim that the Applicant and the victim were in a relationship since 1 year which is so found on page No. 206 of the Application, I am inclined to exercise the right in granting bail to the Applicant. The Applicant undoubtedly shall be put to certain stringent conditions.

9. Considering the material on record, the Applicant deserves to be enlarged on bail on the following terms and conditions :

O R D E R

- (i) The Applicant be enlarged on bail, on executing P R. Bond in the sum of Rs. 15,000/- with one or more sureties in the like amount;
- (ii) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The Applicant shall attend all the dates of hearing before the trial

Court and not seek any adjournments;

(v) The Applicant to co-operate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. All concerned to act on the authenticated copy of this order.

(MILIND N. JADHAV, J.)