

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2303 OF 2024

Shankar Kumar Roy

.. Applicant

Versus

State of Maharashtra and Ors.

.. Respondents

-
- Mr. Ayub Khan, Advocate for Applicant.
 - Mr. D. J. Haldankar, APP for Respondent Nos. 1 and 2 - State.
 - Mr. Samay S. Pawar, Advocate for Respondent No.3 – Complainant.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 04, 2025

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant; Mr. Haldankar, learned APP for Respondent No.1 – the State of Maharashtra and Mr. Pawar, learned Advocate for Respondent No.3 – Complainant.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short ‘**Cr.P.C.**’) seeking Bail in connection with First Information Report No.118 of 2024 (for short ‘**FIR**’) registered with Oshiwara Police Station for offences punishable under Sections 363 and 376(2)(n) of the Indian Penal Code, 1860 and Sections 6 and 10 of Protection of Children from Sexual Offences Act, 2012 (for short ‘**POCSO**’).

3. Though the FIR states that age of victim is 13 years, her birth

certificate has been placed on record to show that on the date of incident and immediately thereafter she was 15 years. A missing report was lodged by First Informant i.e. victim's father on 24.01.2024 stating that at about 04:00 a.m. on the intervening night of 23.01.2024 and 24.01.2024 when victim's mother woke up she found that victim was missing from their house. They attempted to search for her frantically and lodged a missing complaint in the Police Station. Record shows that victim – girl went to Delhi after taking an amount of Rs.2,000/- from the house and in Delhi she met the Applicant.

4. To put in perspective, victim and Applicant were fully acquainted with each other since the year 2022 and in the year 2023 both of them had confessed their love for each other and whenever Applicant used to come to Mumbai, both of them used to meet and also had physical relationship. Applicant as also the victim happened to be hailing from neighbouring / adjacent villages in the State of Bihar. Record shows that Applicant and victim thereafter travelled from Delhi to Bihar namely village – Kadampura and started residing there as a couple. It is seen that Applicant and victim also got married to each other in a temple in Bihar and thereafter started residing together as husband and wife.

5. Mr. Pawar, learned Advocate appointed for Respondent No.3 would persuade me to consider the age of victim and would argue that

considering this facet it would be possible that victim was lured into relationship by Applicant considering her immature age of understanding. He would therefore request that Application be rejected.

6. However in defence, Mr. Khan would submit that factors to be considered by the Court are the ages of both the victim which was 15 years and age of Applicant who was barely 18 years old when they both met in Delhi after the victim on her own travelled from Mumbai to Delhi and thereafter to Bihar and stayed together.

7. Though Mr. Haldankar, learned APP would persuade me to consider the case of victim since she is a minor. He would also fairly argue and inform the Court that in so far as maturity of the person is concerned, it would not be directly proportional to the age of the person in today's times. He would thereafter submit that facts of the case will have to be examined by the Court for consideration as placed on record in the present case. Submission made by the learned APP is correct and appreciated by the Court.

8. It is *prima facie* seen that admittedly victim and Applicant were both known to each other well and infact victim's own statement which she has given to the Medical Officer states that they both were in a relationship for past two years despite victim being below the age of 18 years. The fact that victim had in the middle of the night taken

some money from her house and on her own travelled all the way to Delhi by train itself shows that she was very clear about her actions and decisions.

9. In this regard attention is drawn to the decision of this Court (Coram : Mrs. Mridula Bhatkar, J.) in the case of ***Sunil Mahadev Patil Vs. The State of Maharashtra***¹ which has laid down certain specific guidelines after taking into consideration relevant cases as also the ethos and development of the Indian Society in general. Court in paragraph No.12 laid down certain principles which I find apt to be reproduced hereinbelow for consideration of bail in such Applications:-

“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.”*

10. In so far as present case is concerned, it is seen that victim –

¹ Bail Application No.1036 of 2015 decided on 03.08.2015.

prosecutrix was 15 years old whereas Applicant was 18 years old and it clearly appears from the record namely statement of victim herself that she was in love with the Applicant and therefore she herself alone eloped from her own house, went and met the Applicant in Delhi, travelled to Bihar with him, married him and thereafter started residing together with him without the consent of her parents.

11. This Court in such a case after considering the decision rendered by the Supreme Court in the case of *S. Varadarajan Vs. State of Madras*² and other decisions down the line thereafter looking at the evolution of the impressionable age of girls and boys who may tend to get provoked into the compelling demand of a relationship laid down the aforesaid principles which need to be considered.

12. Out of these factors what is crucial is whether the act between parties is violent or otherwise and in present case it is not. Next important mitigating factor is whether there are any antecedents which in the present case are none. Considering Application of the aforesaid 8 factors to the facts of the present case, I am inclined to grant bail to the Applicant subject to following conditions:-

- (i) Applicant is directed to be released on bail on
furnishing P.R. Bond in the sum of Rs.15,000/-
with one or two sureties in the like amount.

² AIR 1965 SC 942.

Applicant shall be released on furnishing provisional cash bail of Rs.15,000/- and he is permitted to provide one or two sureties as directed within a period of four weeks after the date of his release from prison;

- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months after release and thereafter as and when called;
- (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 cancellation 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 and not pressurize the prosecutrix, complainant and family members;

- (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;
- (vii) Any infraction of the above conditions shall entail cancellation of this order.

13. In paragraph No.3 of order dated 28.01.2025, inadvertently it was mentioned that Advocate is appointed to represent Respondent No.2, the same be read as Respondent No.3. Fees of the learned Advocate Mr. Pawar appointed through legal aid to represent and espouse the cause of Respondent No.3 shall be released by the Registry of this Court within a period of one week from the date of presentation of a server copy of this order on compliance.

14. The aforesaid observations are *prima facie* on the basis of record of the case which have 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.

15. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]