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

BAIL APPLICATION NO.2657 OF 2024

Mandip Gyan Singh

.. Applicants

Versus

The State of Maharashtra and Anr.

.. Respondent

-
- Ms. Anjali Patil a/w Mr. Tohid Shaikh , Advocate for Applicant.
 - Ms. Rajeshree V. Newton, APP for Respondent No. 1 – State.
 - Mr. Karan R. Kadam, Advocate for Respondent No. 2.
 - Mr. H.G. Jaikar, PSI, NRI Costal Police Station, Navi Mumbai.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2025.

P.C.:

1. Heard Mr. Shaikh, learned Advocate for Applicant, Ms. Newton, learned APP for Respondent No. 1 – State and Mr. Kadam, learned Advocate for Respondent No. 2.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short ‘**Cr.P.C.**’) seeking Regular Bail in connection with C.R.No. 208 of 2022 registered with N.R.I. Costal Police Station, Navi Mumbai for offences punishable under Sections 363, 376 (2) (j) (n) of the Indian Penal Code, 1860 (for short ‘**IPC**’) and Section 4,8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short ‘**POCSO**’). Applicant is incarcerated for the past 1 year 6 months and 11 days.

3. Gist of prosecution case is that First Informant i.e. father of the prosecutrix lodged a missing complaint on the intervening night of 17.08.2022 and 18.08.2022. Prosecutrix went missing on 17.08.2022, family of the prosecutrix learnt about this when she did not return home on 17.08.2022. Mother of prosecutrix found that cash amount of Rs. 20,000/- from the house kept in the cupboard was missing. Prosecutrix returned back on 01.09.2022. She was dropped by the Applicant outside Panvel Police Station on the morning of 01.09.2022. She recorded her statement and was brought home. Prosecutrix aged 14 years states in her statement states that she was acquainted with Applicant since long and had a relationship with him. Applicant is 25 years old on the date of FIR. She states that she left her house and reached Mumbai to meet Applicant without informing her parents. She met Applicant and both travelled to Ekvira Devi Temple Karla, Lonavala, Pune where they stayed in a hotel room for 2 nights and then on 19.08.2022 Applicant took her to his friend's house at Panvel, Raigad and both of them stayed there upto 30.08.2022. Two days thereafter Applicant's friend returned back to Punjab (village of Applicant). On 30.08.2022 Applicant's friend informed him on phone that police were investigating the missing complaint of prosecutrix and in that regard had apprehended his friend's brother in Punjab. When Applicant heard this, he immediately on the next day dropped the prosecutrix outside Panvel Police Station and left. She went to the

Police Station and recorded her statement. It is stated in her statement that during their stay together, Applicant forcibly committed sexual intercourse on multiple occasions. It is admitted by prosecutrix that both of them had a love relationship.

4. Mr. Shaikh, learned Advocate for Applicant would submit that prosecutrix and Applicant were acquainted with each other since long as Applicant used to live in the neighboring building and eventually both of them had a love relationship with each other as stated by her in her statement to the police and in her further statement to the Medical Doctor during her medical examination. He would submit that prosecutrix willingly accompanied Applicant and travelled with him to Pune and stayed with him for about 15 days. He would submit that she infact took money from her house before meeting Applicant which itself shows no sign of force and she being clearly aware of her own actions.

4.1. He would submit that there is a clear dichotomy in the statement recorded on 01.09.2022 appended at page No. 89 and her Section 164 statement recorded on 06.09.2022 appended at page No. 103 of the Application. He would submit that prosecutrix has not made any allegation regarding any forceful act or coercion by Applicant. He would submit that prosecutrix clearly accepted her relationship with Applicant and this clearly shows and reflects that she was well aware

of her actions and their relationship was consensual in nature. He would submit that Medical Report appended at page No. 75 when read at page Nos. 77 and 78 dispels any such suspicion as there is no contrary evidence. Hence the prosecution story falls to the ground.

5. He would submit that Applicant does not have any criminal antecedents. He would submit that Applicant is not named in the FIR however FIR was initially lodged against an unknown person. He would submit that Applicant is arrested on 02.08.2023 and has been incarcerated for the past 1 year 6 months and 11 days. He would submit that investigation has been completed, charge-sheet has been filed, however trial has not yet commenced. Hence he would urge the Court to allow the present Application.

6. Ms. Newton, learned APP would persuade me to consider the age of prosecutrix since she was a minor at the time of incident and therefore her consent would not matter. She would submit that prosecutrix was 14 years old at the time of incident. She would fairly argue that in so far as maturity of the person is concerned, it would be directly proportional to the age of the person in today's times. She would submit that facts of the case as delineated will have to be examined by the Court for consideration as placed on record in the present case. She would submit that there is every likelihood of the Applicant exploiting the vulnerability of the prosecutrix in the facts of

the present case and inducing her to elope with him without the consent of her parents. Hence she would submit that the Application be rejected.

7. Mr. Kadam, learned Advocate appointed for Respondent No. 2 through the legal aid would persuade me to consider the minor age of the prosecutrix and argue that considering that facet it would be possible that prosecutrix was lured into a relationship by Applicant considering her immature age of understanding. He would submit that Applicant being a 25 years old adult took a chance and may have induced her into leaving her house alongwith the money without informing her parents. He would draw my attention to the statements of the prosecutrix appended to the medical examination report at page No. 75 and read at page No.76 of the Application and submit that Applicant assaulted her against her wish during their stay together on multiple occasions. He would therefore request that the Application be rejected.

8. I have perused the record with the able assistance of the learned Advocates at the bar.

9. It is *prima facie* seen that admittedly prosecutrix and Applicant were both known to each other well and infact prosecutrix's own statement given to the Medical Officer and before the Magistrate under Section 164 confirms and endorses that they both were in a

consensual relationship despite she being below the age of 18. Further the fact that prosecutrix took an amount of Rs. 20,000/- from her house without informing anyone in her house and on her own volition travelled with the Applicant to Pune and also stayed with him for 15 days itself shows that she was aware about her actions and decisions as also consequences of the same.

10. It is *prima facie* seen that there is a clear dichotomy in the statements of the prosecutrix recorded on 01.09.2022 at page No. 89 and 06.09.2022 at page No. 103. Medical examination report at page No.75 *prima facie* shows no evidence of injury on the body of the prosecutrix. In view of the statements of the prosecutrix herself both before the police and Magistrate coupled with her medical examination report, *prima facie* it is seen that no overt act as alleged can be attributable to the Applicant. Prosecutrix on her own volition eloped with the Applicant as admitted by her.

11. Assistance is drawn from the decision of the Supreme Court in the case of *S. Varadarajan v. State of Madras*¹ wherein the Court in paragraph No.2 has held thus:-

“2. Where a minor girl alleged to be taken away by the accused person, had left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joined the accused, it could not be said that the accused had taken her away from the keeping of her lawful guardian within the meaning of section 361 of the Penal Code, 1860 (“IPC” for short).

¹ AIR 1965 942

Something more had to be done in a case of that kind, such as an inducement held out by the accused person or an active participation by him in the formation of the intention either immediately prior to the minor leaving her father protection or at some earlier stage.”

12. In so far as the offences punishable under Sections 4,6, and 8 of POCSO Act (special law) are concerned, it may be stated that the provisions of this law are, though, stringent in nature, would not deter the Court to grant or refuse bail in order to secure the ends of justice. The conduct of the prosecution in this case is indicative of the fact that she left her home without informing her parents by her own will and also took Rs. 20,000/- from her house without informing anybody and surrendered to the physical desires of the Applicant out of her love and affection for him for 15 days when both of them stayed together. No doubt that the prosecutrix under the purview of POCSO Act is a minor, however the facts of the present case indicate that she had sufficient knowledge and capacity to know the full import of her actions and what she was doing and had only thereafter voluntarily joined and stayed with the Applicant for 15 days.

13. Attention is drawn to the decision of this Court (*Coram: Ms. Mridula Bhatkar, J.*) in the case of ***Sunil Mahadev Patil Vs. The State of Maharashtra***² to contend that consensus of the prosecutrix who is below the age of 18 years is a mitigating circumstance for Trial Court to consider. In furtherance to the above Court has laid down certain

² Bail Application No. 1036 of 2015, decided on 03.08.2015.

specific guidelines after taking into consideration relevant cases as also the ethos and development of the age of the young offenders in the Indian Society in general. Court in paragraph Nos.8, 9,11 and 12 has laid down certain principles which I find it apt to be reproduced hereinbelow for consideration of bail in such Applications. Paragraph Nos. 8, 9, 11 and 12 read thus:-

“8. It is to be noted that the case of S. Varadarajan was decided in the year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon'ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan. Now we come across such cases everyday. If a girl is a minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstance. Some trial Courts dealing with such Bail Applications, especially after Nirbhaya case, started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern.

9. In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous. Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail.

10. ...

11. *Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.*

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."

14. In so far as present case is concerned, it is seen that victim – prosecutrix was 14 years old whereas Applicant was 25 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 along with money, travelled with Applicant to Pune, and thereafter stayed with him without the consent of her parents.

15. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

16. Multiple decisions of the Hon'ble Supreme Court and various other High Courts have favoured the release of young offenders on bail pending trial so that the regressive influences of jail environment can be avoided and keeping in mind the principle of best interest in the aforesaid circumstances.

17. In the present case before me it is crucial to consider whether the act between the parties is violent or otherwise and in the present case it is not. Another mitigating factor is whether there are any criminal antecedents of the Applicant which in the present case are none. The aforesaid mitigating facts and Applicant's incarceration for more than 1 year 6 months therefore persuade me to consider Applicant's case.

18. In view of the above observations and facts delineated herein above the Applicant before me is entitled for bail. Bail Application is allowed on the following terms and 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;
- (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 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 any of the witnesses or tamper with the evidence in any manner; Applicant shall not make any attempts to re-associate with the Complainant in any manner either through a device or in-person;
- (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 the prosecution to seek cancellation of this order.

19. 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.

20. Fees of the learned Advocate Mr. Kadam appointed through Legal Aid to represent and espouse the cause of Respondent No.2 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.

21. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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