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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4153 OF 2024

Ramjan Alam Shaikh

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Adhik Kadam a/w. Mr. Imran Shaikh, Advocates for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent No.1 – State.
- Ms. Ilsa Shaikh, Advocate for Respondent No.2.
- Mr. Vadane, API – Narpoli Police Station, Bhiwandi, Thane.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 24, 2025

P. C.:

1. This Application is filed under Section 439 of Code of Criminal Procedure, 1973 for seeking regular bail in C.R. No. 541 of 2023 registered with Narpoli Police Station, Mumbai for offences punishable under Sections 363 and 376 (2)(n) of Indian Penal Code, 1860 (for short '**IPC**') readwith 4, 6 (J)(2), 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO**').

2. Prosecution case is that Applicant forcefully married prosecutrix and committed rape repeatedly over a period of 4 months from February, 2023 to June, 2023. Prosecutrix was 17 years old and

was a resident of Pune and Applicant was 25 years old at the time of incident.

3. Prosecution case finds it basis on the statement of the First- Informant – victim as recorded in the FIR dated 24.06.2023 appended at page No. 38 of the Application. She states that she had known the Applicant for two years prior to the filing of the FIR as he used to visit Pune for work purpose. She states that they used to chat with each other on daily basis. According to her statement, on 02.05.2022 Applicant brought her from Pune to his house in Bhiwandi as she had left her home without informing anyone. Her family members therefore lodged a missing complaint at Vrishantwadi Police Station, Pune. On 06.05.2022 police alongwith her mother reached Applicant's house at Bhiwandi and brought both of them back to Pune following which Applicant was arrested and taken into custody for abduction. She further states that her parents then sent her to her maternal uncle's village in Nevasa, Ahmednagar fearing reconciliation between her and the Applicant. However according to her she remained in contact with Applicant's sister and continued inquiring about him. After 6 months on Applicant's release from the prison they both once again reconnected. She states that Applicant insisted her to live with him, but she informed him that being a minor her parents would not accept their relationship. Despite this in February, 2023

Applicant reached Nevasa and prosecutrix left with him to stay at his house in Bhiwandi. She then states that Applicant forcefully married her eventually leading to her pregnancy (discovered by her to be 4 months in June, 2023) despite knowing that she was a minor. She states that they both cohabited as husband and wife in Bhiwandi. She also states that after 20 days she contacted her mother on phone and informed her that she was residing with the Applicant but did not disclose her location to the mother. She states that at this time her family members did not file any missing complaint. However on 24.06.2023 she filed a complaint against Applicant, alleging that he had forcefully brought her to his house at Bhiwandi and established sexual relationship with her eventually leading to her pregnancy.

4. Mr. Kadam, learned Advocate for Applicant would submit that the case in hand is of a consensual love relationship between both parties. He would vehemently submit that there is a delay of 4 months in filing of the FIR after the first incident alleged by the prosecutrix when she went to stay with him for the second time in February, 2023.

4.1. He would submit that prosecutrix and Applicant were known to each other since two years prior to filing of the FIR. He would submit that there was a precursor incident on 02.05.2022 where prosecutrix left her home without informing anyone to live with Applicant. She stayed with Applicant up to 06.05.2022 before being

contacted by the police and her mother and being brought to Pune for lodging the crime. Thereafter Applicant was arrested for abduction and prosecutrix was sent to her maternal uncle's village in Nevasa despite which prosecutrix stayed in contact with Applicant's sister and after 6 months reconnected with Applicant on his release from the custody. He would submit that even after the said incident in the year 2022, prosecutrix continued to stay in contact with the Applicant and when Applicant went to Nevasa she alongwith him came to Bhiwandi without informing anybody from her family, got married and started residing as husband and wife. He would submit that prosecutrix's parents did not take any action or lodge any abduction complaint against the Applicant for the second time despite knowing about the same which clearly indicates the consensual nature of relationship between the Applicant and the prosecutrix.

4.2. He would draw my attention to the dichotomy in the statements of the prosecutrix recorded in the FIR at page No. 38 and Section 164 Cr.P.C. statement at page No. 69 when read at page No. 70 where prosecutrix herself states that she was the one who insisted to the Applicant to reside with him as she wanted to live with him. She has also admitted that she was in constant contact with the Applicant and resided with Applicant at his sister's house for 2-3 months and after discovering her pregnancy they rented a separate room in

Bhiwandi. She has stated that police visited them and because she was a minor and then they both were taken to the police station. He would submit that prosecutrix has not made any allegation regarding any forceful act or coercion by Applicant. He would submit that prosecutrix's mother's Section 164 statement recorded on 07.07.2023 at page No. 72 also highlights that prosecutrix had informed her that she was staying with Applicant and they should not worry about her. He would submit that prosecutrix clearly accepted her relationship with the Applicant and this clearly shows and reflects that she was well aware of her actions and their relationship was consensual in nature. Hence the prosecution story falls to the ground.

4.3. He would submit that from her Section 164 statement and statement recorded during Medical Examination appended at page No. 102 read at page No. 104 it is evident that she voluntarily did not lodge complaint against Applicant and neither did her parents lodge any missing or abduction complaint even after knowing that she was residing with the Applicant.

4.4. He would submit that Applicant is arrested on 24.06.2023 and has been incarcerated for the past 1 year 8 months and 6 days. He would submit that investigation has been completed and chargesheet has been filed, however trial has not yet commenced. Hence he would urge the Court to allow the present Application.

5. Mr. Kulkarni 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. He would submit that prosecutrix was 17 years old at the time of the incident. He 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. He would submit that considering the age of prosecutrix there is a likelihood of the Applicant exploited the vulnerability of prosecutrix in the facts of the present case and forcefully brought her to reside with him and established physical relationship leading to her pregnancy. Hence he would submit that the Application be rejected.

6. Ms. Shaikh, learned Advocate appointed for Respondent No. 2 through the legal aid would persuade me to consider the age of the prosecutrix and argue that the fact that she was brought to Bhiwandi from Pune not once but twice subsequently from Nevasa be considered. She would submit that the act of Applicant bringing prosecutrix and establishing physical relations and getting her pregnant despite knowing that she is a minor is an important aspect to be considered. She would also submit that there is possibility that prosecutrix was lured into a relationship by Applicant considering her immature age of understanding. She would submit that Applicant being a 25 year old adult took a chance and may have induced her

into leaving leaving her house and marrying him without informing her parents. She would draw my attention to the Medical Examination Report and her statement in the FIR which states that Applicant forced her to live with him and marry him and eventually got her pregnant against her wish during their stay together. She would therefore request that the Application be rejected.

7. I have heard Mr. Kadam, learned Advocate for the Applicant, Mr. Kulkarni, learned APP and Ms. Shaikh learned Advocate for Respondent No. 2 and with their able assistance I have perused the record placed before me.

8. It is *prima facie* seen that admittedly prosecutrix and Applicant were well- acquainted to each other, they also chatted on daily basis prior to the alleged incidents. It is seen that there was a precursor incident of a similar nature in the year 2022 when the prosecutrix had eloped with the Applicant and subsequently they were contacted after a few days and brought back to Pune. However despite this prosecutrix stayed in contact with the Applicant and repeated the same act after his release from prison which clearly shows and reflects the consensual nature of their relationship despite she being below the age of 18 years .

9. Further the fact that prosecutrix voluntarily left her house in the first instance stayed with Applicant for 5 days in 2022 and later left her maternal uncle's house in Nevasa and travelled with the Applicant to Bhiwandi where she stayed with him for 20 days before informing her mother over a phone call and no action taken for the next 3 months itself shows that she was clearly aware about her actions and decisions as also consequences of the same and her family also had knowledge about the same.

10. *Prima facie* it is seen that there is a clear dichotomy in the statements of the prosecutrix recorded in the FIR dated 24.06.2023 at page No. 38 and her statement recorded under Section 164 dated 07.07.2023 appended at page No. 69 wherein she clearly admits that she insisted the idea of living together and hence she left her house without informing anyone not once but twice. She even admits being married and residing with the Applicant as husband and wife. It is *prima facie* seen that there is a delay in filing the FIR after the first incident alleged by the prosecutrix. From the record it is seen that she was in love with the Applicant and therefore eloped with him twice from her house without informing anyone and developed physical relations with him leading to her pregnancy. It is also seen that prosecutrix's family members did not take any action or file any missing or abduction complaint in the second instance which itself

shows that the relationship between the prosecutrix and Applicant was consensual in nature. It is surprising to see that even after the alleged forceful actions of Applicant and 4 months of her pregnancy she continued to reside with the Applicant and did not inform any of her family members and also did not lodge any complaint against him. It is *prima facie* seen that only when the police visited their house as stated in her statements, is when she lodged a complainant against the Applicant.

11. In view of the statements of prosecutrix herself both before the police and the Magistrate, *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.

12. 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). 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.”

1 AIR 1965 942

13. 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 surrendered to the physical desires of the Applicant out of her love and affection for him for 5 days in the first instance and 4 months in the second instance 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.

14. 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 specific guidelines after taking into consideration relevant cases as also the ethos and development of the age of the young

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

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 of the above decision 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."

15. In so far as present case is concerned, it is seen that prosecutrix was 17 years old whereas Applicant was 25 years old and it clearly appears from the record i.e. statements of prosecutrix herself that she voluntarily eloped from her house without informing anyone, travelled with Applicant to Bhiwandi from Pune and Nevasa and thereafter stayed with him without the consent of her parents on two instances.

16. 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.

17. 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.

18. 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. The aforesaid mitigating facts and Applicant's incarceration for more than 1 year 8 months and 6 days therefore persuades me to consider Applicant's case.

19. In view of the above observations and facts delineated herein above the Applicant has made out a case 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 noon 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; and
- (vii) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

20. 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.

21. Fees of the learned Advocate Ms. Shaikh, learned Advocate 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.

22. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2025.02.27
11:33:43 +0530