

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4426 OF 2024

Vasim Majali @ Vashim

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

.....

- Mr. Mateen Qureshi for Applicant
- Ms. Mahalakshmi Ganapathi, APP for Respondent No. 1 - State
- Ms. Aafreen Shaikh, Advocate (appointed) a/w Mr. Abhishek Malhotra & Ms. Shezaad Shaikh for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.**DATE : APRIL 4, 2025****P. C.:**

1. Heard Mr. Qureshi, learned Advocate for Applicant and Ms. Shaikh, learned Advocate (appointed) for Respondent No. 2.

2. FIR in the present case is filed on 04.08.2020. At the time of incident, Applicant was 21 years old and prosecutrix was 15 years old. *Prima facie* reading of the FIR and the witness statements appended to the Application show that the victim herself had confessed her love for the Applicant as far back as in September 2019. Prosecutrix's own statement appended along with the FIR in fact states so. It is appended at page No. 32 of the Application. It is further seen that prosecutrix without the knowledge, consent and without informing her parents or family members went along with Applicant to Delhi on

26.07.2020 and thereafter from there they went to Unnav in U.P. to visit the Applicant's family home. It is also seen that Applicant herself called her parents from U.P. and what is intriguing is that the family of the prosecutrix had full knowledge about the association of Applicant and prosecutrix even much prior to the date of filing of the FIR. This is *prima facie* borne out from the witness statement of the father of prosecutrix appended to the Application. It also stands corroborated by the statement of the prosecutrix herself.

3. The aforesaid *prima facie* facts are strong. Ms. Shaikh would however persuade the Court to consider the same in a different perspective. She would submit that victim being 15 years old was a minor and therefore vulnerable at the time of the first incident when she was asked or rather induced by Applicant to travel with him to Delhi, hence her consent would be irrelevant. She has relied heavily on Section 29 of the POCSO Act stating that there is an inherent presumption under the said provision and in that view of the matter, even if the victim has consented, her consent cannot be considered as a mitigating factor for consideration of bail. She would submit that *prima facie* facts of the present case would show that Applicant had in fact kidnapped her and taken her to Delhi and then U.P. and kidnapping being an offence of strict liability even if the minor would go voluntary with the Applicant, the role of Applicant would have to

be screened under the realm of the provisions of the act of kidnapping. That apart she would submit that the statement recorded by prosecutrix *prima facie* would show that there were repeated forced encounters at multiple times when she was with the Applicant and therefore such an offence would have to fall under the provisions of an aggravated assault considering the fact that she had also become pregnant in due course thereafter. She would refer to the decision of the Supreme Court in this regard in support of her submissions in the case of *State of Haryana v. Raja Ram*¹, *Ganesan v. State*² and *Independent Thought v. Union of India*³ and would persuade the Court to consider that the defence taken by Applicant of involvement of prosecutrix in a romantic relationship with him cannot be sustained by Court in view of the admitted fact that she was a minor. She would rely upon the decision of the Supreme Court in the case of *Vinod Kumar v. State of Kerala*⁴ which holds that having a love affair with the minor is not a defence under the said Act. She would therefore persuade the Court to consider the aforesaid circumstances and accordingly reject the Application.

1 1973 AIR (SC) 819

2 2020 SCC OnLine SC 543

3 (2017) 10 SCC 800

4 2014 (5) SCC 678

4. Considering that learned APP Ms. Newton appearing in the matter is unwell today, present Applicant is adjourned to **7th April, 2025**. To be shown under the caption "**Part-Heard**".

[MILIND N. JADHAV, J.]

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