

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4658 OF 2024

Vinayak Ganesh Chavan

.. Applicant

Versus

State Of Maharashtra and Anr.

.. Respondents

.....

- Ms. Anjali Patil a/w Mr. Tohid Shaikh, Advocates for Applicant.
- Ms. Shraddha Pawar, Appointed Advocate from Legal-aid for Respondent No.2.
- Mr. Hitendra J. Dedhia, APP for State.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 18, 2025

P. C.:

1. Heard.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 304 of 2021 registered with Nerul Police Station on 24.08.2021 for offences punishable under Sections 376(2)(i), 354-A of the Indian Penal Code, 1860 and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3. Age of the victim is 13 years 9 months and 27 days on the date of incident whereas age of Applicant is 19 years. Applicant was friend of prosecutrix's brother. Applicant and Prosecutrix were known to each other for one and half year prior to the date of first incident which is stated in the FIR. Rather FIR proceeds only on a singular

incident which took place on 8th February 2021 but has been filed on 24.08.2021 after a hiatus of more than 6 ½ months. Said FIR and statement given by the mother of prosecutrix are *in tandem*. However, medical history which is narrated on the following day i.e. on 25.08.2021 in detail to the doctor on duty by the prosecutrix categorically states that there were two specific incidents of sexual intercourse between parties, one in February and another in July.

4. *Prima facie* dichotomy is noticed in the aforesaid statements itself. Though it is argued by the learned APP that medical record cannot be used to rely upon at this stage as trial is underway, however, the learned Advocate for Applicant has placed before me the evidence of prosecutrix which has been recorded by the trial Court. On reading of the same it is clear that Applicant and prosecutrix were in a love relationship with each other and were regularly meeting each other during the time when they knew each other and until the filing of the FIR. There are clear admissions by the prosecutrix. That apart even after the first incident which occurred in February and the second incident which occurred in July, 2021 it is *prima facie* seen that despite the Applicant having given an undertaking not to meet the prosecutrix in the presence of parents of both the sides, prosecutrix has herself deposed that even thereafter they regularly met each other and chatted with each other until leading to filing of the FIR.

5. Though it is argued by the learned APP that age of the prosecutrix is such that it cannot be taken as she having given consent to any act but nevertheless such age of the prosecutrix was such that she understood the consequences of all her action. That apart filing of the FIR does not disclose the second incident at all which itself leads to a suspect. Second incident gets disclosed pursuant to the filing of the FIR only before the Medical Officer first when the prosecutrix is examined. Medical report justifies the state of the prosecutrix at the then time pursuant to the incident in question as argued by Ms. Pawar, learned appointed Advocate. Be that as it may, the record clearly indicates that prosecutrix not only knew the Applicant but also had developed love for the Applicant.

6. It is *prima facie* seen that admittedly age of the prosecutrix was around 14 years and the age of Applicant was 19 years and they were known to each other. As per statement of prosecutrix and statements of various witnesses who are family members of the prosecutrix it is clearly borne out that they both were known to each other and meeting each other regularly. It is further seen that the categorical statement of prosecutrix itself shows that the twin incidents had occurred but the second incident was suppressed by her at all times until it got disclosed in the cross-examination of the prosecutrix which she admitted as having happened.

7. In this regard attention is drawn to the decision of the Supreme Court in the case of ***S. Varadarajan Vs. State of Madras***¹ 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 compelling demand of a relationship which has laid down the aforesaid principle which needs to be considered.

8. Attention is drawn to the decision of this Court (Coram: Mridula Bhatkar, J.) in the case of ***Sunil Mahadev Patil Vs. State of Maharashtra***² which states that consensus of the prosecutrix who is below the age of 18 years is a mitigating circumstance for trial Court to consider, especially while dealing with bail Applications. The relevant paragraph Nos. 8, 9 and 11 of the said 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

1 1965 AIR 942

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

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 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 sets 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.”

9. In cases such as the one before me, to continue further incarceration of Applicant, it is crucial to consider whether the act between the parties is violent or otherwise, which on perusal of record is not so, rather it is a consensual act. Another mitigating factor is whether there are any criminal antecedents which in the present case

are none. The aforesaid mitigating factors persuade me to consider Applicant's case.

10. 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 factors 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 which are required to be considered in such cases. The material placed before me do not indicate towards any force being engaged by the Applicant over the prosecutrix during their relationship, rather both incidents are consensual. Prosecutrix has admitted that even after the second incident she met the Applicant regularly thereafter. It is seen that multiple decisions of the Supreme Court and High Court have favoured the release of young offenders on bail pending trial especially in consensual relationship so that the regressive influences of jail environment can be avoided and keeping in mind the principle of best interest in the aforesaid circumstances. Thus, in the light of the above *prima facie* observations, I am of the view that the Applicant is entitled to bail.

11. Bail Application is allowed subject to the following terms and conditions:-

- (i)** Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- 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 am to 12:00 pm for 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 with any of the witnesses or tamper with the evidence in any manner;
- (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)** Applicant shall not make any attempts to re-associate with the prosecutrix in any manner either through a device or

in-person and shall not reside in the jurisdiction of the Police Station wherein the prosecutrix is residing until the Trial is concluded. Investigating Officer shall specifically ensure that this condition is followed.

(viii) Any infraction of the above conditions shall entail cancellation of this order.

12. 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 and any observations herein should not be construed as an expression of by the Court touching the merits of the case. The Trial shall be adjudicated on the basis of evidence and in accordance with law.

13. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]