

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4673 OF 2024

Harish Anil Kale

.. Applicant

Versus

State of Maharashtra

.. Respondent

-
- Mr. Pradeep Singh a/w Ms. Ruchika Rajpurohit, Advocates for Applicant.
 - Mr. Sukanta Karmakar, APP for Respondent No.1 – State.
 - Ms. Meghna Gawalani, Advocate for Respondent No.2.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 11, 2025.

P.C.:

1. The Applicant seeks Bail for being indicted in C.R. No. 478 of 2024 for offences punishable under Section 363 and 376 Indian Penal Code, 1860 along with Section 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO**').

2. Age of the Applicant on the date of crime is 23 years, age of the victim – prosecutrix is 14 years. FIR was initially lodged on 21.05.2024 on which date missing complaint was lodged by the paternal aunt of the prosecutrix. Prosecutrix worked as housemaid. The prosecutrix was found on 22.05.2024. She was brought to the Police Station on 24.05.2024 when her statement was recorded. Record shows that in that statement prosecutrix has stated that on

20.05.2024, her paternal aunt accused her of stealing Rs.10,000/- kept in the house and threatened to inform her father without listening to her and was about to call her father when she left the house in fear and walked upto Goregaon station and spent the following two days and nights on her own. She wandered around near Raheja Township and spent the first night in a parked rickshaw. On the following day she went to meet her mother but met some acquaintances on the way who informed her that her family members were searching for her, therefore on that day also, being in fear, she spent the rest of the day and night in the parked rickshaw in the same area. On 22.05.2024 she went to her mother after which she was brought to the police station on 24.05.2024 i.e. after two days. The record shows that prosecutrix has recorded her supplementary statement on 29.05.2024. In this statement, she stated for the first time that in January 2024, she befriended the Applicant who was staying in her locality, they both fell in love with each other and that from 19.01.2024 were in a love relationship. She stated from that point of time onwards they indulged in a sexual relationship to which the prosecutrix did not object. However in this supplementary statement, prosecutrix has stated that between 17.01.2024 and 22.05.2024, the Applicant forced himself on her and on several occasions committed forceful physical relationship without her consent. It is on the basis of this supplementary statement that Applicant is indicted in the crime since prosecutrix is a minor.

3. Coming back to the principal statement and lodging of the FIR by the paternal aunt, it is seen that there is a clear discrepancy and a falsehood in that complaint itself which does not correspond with the twin statements of the prosecutrix recorded on 24.05.2024 and 29.05.2024.

4. Mr. Singh, learned Advocate for Applicant would draw my attention to the contradiction in the statements of the First Informant and the prosecutrix. In so far as the issue of outraging the modesty of prosecutrix is concerned, he would submit the prosecutrix's own supplementary statement is *prima facie* proof that she was in a consensual relationship with the Applicant and if not for the allegation of theft alleged against her by her paternal aunt, their relationship would not have come to light at all. He would submit that apart from the aforesaid ground the statement of prosecutrix during her medical examination portrays a completely different story. My attention is drawn to the medical examination history in the detailed report appended at page No.50 from which it is *prima facie* evident that her menstrual history is regular, she herself has stated that since January 2024 onwards she used to visit the Applicant's home and had physical relationship with him regularly. She has further stated that on 20.04.2024 she had a quarrel with her paternal aunt and therefore left the house and stayed on her own for two days after which she went to her grandmother's place. The medical report concludes that possibility

of sexual intercourse cannot be ruled out.

5. Mr. Karmakar, learned APP would submit that considering the provisions of POCSO and age of prosecutrix, the Court should not show any indulgence to the Applicant. He would vehemently submit that if he is released, he will in all probability repeat the offence and make attempts to tamper with the evidence. He would thus pray for the Application to be rejected.

5.1. In support of his submissions, Mr. Karmakar has referred to and relied upon the following decisions of the Supreme Court and Allahabad High Court:-

- (i) *In Re: Right To Privacy of Adolescents*¹;
- (ii) *X (Minor) Vs. State of Jharkhand and Anr.*²;
- (iii) *Independent Thought Vs. Union of India and Anr.*³; and
- (iv) *Mohammad Saif Vs. State of U.P. and Ors.*⁴

5.2. He would submit that in the case of *X (Minor) Vs. State of Jharkhand and Anr.* (*supra*) the Supreme Court held that considering the age of the victim was barely thirteen years of age on the date of alleged offence, the ground of love affair between victim and accused would have no bearing on grant of bail and reversed the order of the Jharkhand High Court granting bail to the accused therein. He has

1 AIR 2024 SC 4004

2 2022 SCC OnLine SC 2373

3 AIR 2017 SC 4904

4 2024:AHC:92134

drawn my attention to the judgment of the Allahabad High Court in the case of ***Mohammad Saif*** (*supra*) wherein the High Court has followed the decisions of the Supreme Court in the case of ***X (Minor) Vs. State of Jharkhand and Anr.*** (*supra*) and ***Independent Thought*** (*supra*) and held that considering the victim aged 16 years there was a child according to POCSO Act, the argument that the victim and Applicant therein were in a love-affair and having physical relationship would not fall under the offence of rape cannot be accepted being a legally unsustainable argument. Next he has drawn my attention to paragraph Nos.6, 8, 9, 11, 16, 17 and 21 in the decision of the Supreme Court in the case of ***In Re: Right to Privacy of Adolescents*** (*supra*) and would submit that considering the observation in the aforesaid decisions, this Court should reject the Application for bail of Applicant.

6. Ms. Gowalani, learned appointed Advocate appointed through Legal Aid to espouse the cause of the prosecutrix would adopt the arguments of the learned APP and would further submit that consent of the prosecutrix is immaterial when she is a minor as in the present case. She would submit that Applicant has taken undue advantage of the prosecutrix and her vulnerability and therefore does not deserve bail. She would thus pray for the Application to be rejected.

7. I have perused the record and considered the submissions of the learned Advocates at the bar. *Prima facie* it is seen that there is a clear contradiction in the statement of the prosecutrix qua the present crime in question. The Section 164 statement of the prosecutrix is recorded before the Magistrate on 01.07.2024, it is appended at page No.79 of the Application. In that statement, for the first time she has stated that “*one fine day*” (without giving any date) she had a physical relationship with the Applicant at his house and thereafter they used to meet regularly and have physical relationship. The prosecutrix then states that one fine day Applicant asked her to give him Rs.10,000/- and therefore she committed the theft of the said amount in the house of her paternal aunt on 19.03.2024 and gave it to Applicant. This date is two months prior to the date of the theft incident in the FIR. The prosecutrix then states that on that evening when the family members in her house came to know about the theft, she confessed to them of having stolen and given it to the Applicant. This led to all family members being angry with her because of which she ran away from the house. This Section 164 statement recorded on 01.07.2024 before the Magistrate is on the face of record completely contradictory to the Applicant’s statements recorded on 24.05.2024 and 29.05.2024. From the record it is clear that Applicant though 14 years old, was clearly aware about her relationship and acts with the Applicant, rather both of them were in a consensual love relationship with each other and

most importantly had physical relationship from January to May 2024 without the prosecutrix ever complaining about the same.

8. In view of the above observations about clear contradictions in the Applicant's own statements *vis-a-vis* her own Section 164 statement and the statement given before the medical officer, case of prosecutrix does not inspire confidence and appears to be suspect. Applicant has no antecedents, there is no material placed on record to show that he kidnapped the prosecutrix, nothing in the entire FIR or statements recorded about any threat administered to the prosecutrix, investigation having being completed, chargesheet having being filed, the applicant has made out a case for bail.

9. In view of the above, present 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. 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 Sunday 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 she 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 not make any attempt to re-associate with the victim girl in any manner either through any device or in-person;
- (vii) 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
- (viii) Any infraction of the above conditions shall entail cancellation of this order.

10. It is clarified that the observations in this order will not be treated as an expression of opinion on the merits of the case, which would be determined and decided on the basis of the evidence which is

led. The trial court shall adjudicate and decide the prosecution's case as per law.

11. In view of the above directions, Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2025.02.11
17:37:12 +0530