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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4934 OF 2024

Bhaurao Jagan Pawar

... Applicant

Vs.

The State of Maharashtra & Anr.

... Respondents

Mr. Ranjit Jadhav i/b Mr. Gaurav Pandey & Bhoomi Mishra, Advocate for the Applicant.

Ms. Kanchan Pawar (Through Legal Aid), Advocate for Respondent No.2.

Dr. Ashvini Takalkar, APP for Respondent/State.

Mr. Harshwardhan Bahir-PSI, Yeola Police Station District Nashik

CORAM : ASHWIN D. BHOBE, J.

DATE : 5th AUGUST, 2025.

P.C. :

1. Heard Mr. Ranjit Jadhav, learned Advocate for the Applicant, Dr. Ashvini Takalkar, learned APP for the State and Ms. Kanchan Pawar, learned Advocate for Respondent No.2.

2. By the present Application, Applicant is seeking bail in Crime No. 574 of 2023 registered with Yeola Taluka Police Station District Nashik for the offences punishable under Sections 363 & 366 of the Indian Penal Code (for short "IPC") and under Sections 4,6 & 8 of the Protection of Children From Sexual Offences Act (for short "POCSO Act"). Said crime is registered as Special Case No.340 of 2023 and is pending before the Court of Additional Sessions Judge, Yeola District Nashik.

3. FIR is registered at the instance of Respondent No.2 i.e father of the victim. Case of the prosecution is that the Applicant kidnapped the victim from the legal custody of Respondent No.2 on the pretext of marrying her. Applicant thereafter had forceful sexual intercourse with the victim.

4. Applicant was arrested on 30th October, 2023. Bail Application at Exhibit-6 filed by the Applicant in Special Case No.340 of 2023 was dismissed on 21st February, 2024. Second Bail Application filed by the Applicant at Exhibit-7 in Special Case No.340 of 2023 was rejected by the Additional Sessions Judge, Yeola on 3rd July, 2024.

5. Mr. Ranjit Jadhav, learned Advocate for the Applicant, submits that the Applicant and the victim were known to each other for one year prior to the incident, which incident is registered as an offence. He submits that it is upon Respondent No.2 becoming aware the relationship of the Applicant with the victim, that he objected to the said relationship and filed the complaint. He submits that the Applicant and the victim are in love with each other. He submits that the victim travelled with the Applicant on her own. He submits that the Applicant was 24 years of age at the time of the incident and he is a labourer by profession. He submits that the Applicant does not have any criminal antecedents.

6. Dr. Ashvini Takalkar, learned APP for the Respondent-State, refers to the statement of the victim recorded under Section 161 of Cr. P. C. and submits that the victim has made reference to having a love affair with the Applicant. She submits that the statement of the victim

recorded under Section 164 Cr. P. C. does not support the prosecution case. She submits that the charge in Special Case No.340 of 2023 has been framed, two witnesses out of the 17 prosecution witnesses have been examined till date.

7. Ms. Kanchan Pawar, learned Advocate for Respondent No.2, submits that the victim in the present crime has given her statement to the police as well as to the Magistrate.

8. I have perused the record with the able assistance of learned Advocates for the parties.

9. In the case of ***Sunil Mahadev Patil Vs. State of Maharashtra***, this Court in paragraph Nos. 8, 9, 11 & 12 has held as under:-

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 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.

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. considering 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 Act or not.*
- (v) Whether there is likelihood of threats intimidation, if at all the boy is released. or*
- (vi) Whether any chance of tempering 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."

10. Perusal of the records indicates that the Applicant was 24 years of age whereas the victim was almost 15 years of age. In the statement of the victim recorded under Section 161 of Cr.PC., the victim indicates she having feelings towards the Applicant. Victim has not made reference to any violent behaviour of the Applicant or the victim being subject to violent act at the hands of the Applicant.

11. Statement of the victim recorded under Section 164 of Cr. PC. does not support the prosecution case, as pointed out by Dr. Ashvini Takalkar, learned APP.

12. Considering the Applicant to be 24 years age, he deserves to get employment to plan and secure his future. Continuation of the Applicant in jail is not warranted. Applicant is in jail for a period of almost 1 year and 8 months. Prosecution has 15 more witnesses to be examined and as such trial would be delayed. Applicant is therefore entitled to bail.

13. In view of the above, Bail Application is allowed on the following conditions:-

- (a) Applicant be released on bail in Crime No. 574 of 2023 registered with Yeola Police Station upon furnishing P.R. Bond in the sum of Rs. 25,000/-each with one or two sureties in the like amount, to the satisfaction of the Additional Sessions Judge, Yeola.

(b) Applicant shall not directly or indirectly make any inducement, threat, or promise to the Complainant or any person acquainted with the facts of the case, as also not tamper with the evidence.

(c) Applicant shall not contact the family of the victim or any of the prosecution witnesses.

(d) Applicant upon release within 3 days shall furnish his residential addresses with proof and contact details to the Investigating Officer, Yeola Police Station, Nashik.

(e) Applicant shall attend the trial in Special Case No. 340 of 2023 pending before the Trial Court regularly on every date unless exempted by the Trial Court.

14. Bail Application No. 4934 of 2024 is allowed in the above said terms.

(ASHWIN D. BHOBE, J.)