

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

**INTERIM APPLICATION NO.2528 OF 2024
IN
CRIMINAL APPEAL NO.1166 OF 2024**

Vaibhav Nandkumar Londhe Applicant

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Kunal V. Shirgire a/w Ms. Mitalee Gaikwad i/b. Mr. Vikas Kolekar, Advocate for Applicant.
- Ms. R. D. Humane, APP for the State/Respondent.
- Ms. Manisha Devkar, appointed Advocate, for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 21st JULY, 2025**

P.C. :

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant. The Applicant was convicted and sentenced by the learned Additional Sessions Judge, Islampur, vide his Judgment and Order dated 22/01/2024 passed in Special Case No.35/2020.

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2. The Applicant was acquitted from the charges of

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offences punishable u/s 376, 376(2)(n), 323, 504, 506 of the Indian Penal Code. But he was convicted for commission of offence punishable u/s 6 of the Protection of Children from Sexual Offences Act 2012 and was sentenced to suffer rigorous imprisonment for 20 years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for one month.

3. Heard Mr. Kunal V. Shirgire, learned counsel for the Applicant, Ms. Manisha Devkar, learned counsel for the Respondent No.2 and Ms. R. D. Humane, learned APP for the State.
4. The Applicant was in jail from 25/09/2020 to 27/01/2021, then from 29/03/2023 to 03/08/2023 and then from 12/12/2023 till today.
5. The prosecution case is that the Respondent No.2 was 17 years of age in April 2020. Her date of birth was 05/04/2003. Therefore, at the time of incident, she was 17 years and 1 month old. According to the prosecution case, the

Applicant took the Respondent No.2 with him to his house on 08/04/2020 and kept her with him. They had a daughter born from their physical relations. There was dispute between them. Therefore, the Respondent No.2 called her mother, who came to the house of the Applicant and took back the Respondent No.2. After that, the FIR was lodged and the investigation was conducted. At the end of the trial, the Applicant was convicted and sentenced as mentioned earlier.

6. Learned counsel for the Applicant submitted that the evidence shows that it was a purely consensual relationship, though there are allegations that she was taken to the Applicant's house against her wish. He further submitted that the prosecution has not proved that the Respondent No.2 was below 18 years of age by furnishing admissible documentary evidence. He submitted that the daughter born from their physical relations is residing with the Applicant's parents and the Respondent No.2 is already married to someone else. He submitted that in this background, the Applicant deserves to be released on bail during pendency of his Appeal.

7. Learned APP submitted that though there appears to be an element of consent, since the Respondent No.2 was below 17 years of age, the defence of consent would not be available to the Applicant. She strongly opposed grant of bail to the Applicant even on humanitarian grounds.
8. Learned counsel for the Respondent No.2 also adopted the same approach and opposed this application.
9. I have considered these submissions. I have perused the evidence produced by the learned counsel for the Applicant on record through a separate compilation.
10. The Respondent No.2 is examined as P.W.1. She has stated that in the year 2020, she got acquainted with the Applicant through a common friend. The Applicant told her that he liked her and proposed marriage to her. According to her, at that time, she had told him that since she was a minor, they should wait till she became major and then get married. On 08/04/2020, the Applicant called her to meet at Market Yard.

She went there. The Applicant had brought a two wheeler. He told her to sit on the two wheeler. According to her, he had threatened to kill her mother and brother and had also threatened to defame her. Because of his threats, she sat on the two wheeler. He took her to Borgaon. He kept her in a room. She tried to call her mother. But the Applicant took her mobile and prevented her from calling her mother. On 14/04/2020, he got married with the Respondent No.2 in a temple. At that time, three persons were present. After that, he kept her in a house. He established physical relations with her. She got pregnant. She was taken to the Hospital. She came to know that she was pregnant for 5 months. In the meantime, her mother had lodged the complaint. It is alleged that the Applicant started beating the Respondent No.2 and also started doubting her character. Therefore, she called her mother telephonically. Her mother and her two aunts came there and then she lodged her FIR at Islampur police station. She deposed that the Applicant had kept her marksheet of the 10th standard with himself. But on the next day, in her examination-in-chief she produced the certificate issued by the S.S.C. Board.

11. She gave birth to a daughter on 22/01/2021. In the cross-examination, she admitted that their friendship had turned into a love relationship. On 08/04/2020, when she left her house to meet the Applicant, at that time, she had told her grandmother that she was going to her mother's village. After that, she was taken to the Applicant's house. The Applicant's mother was present in the house. She admitted that she got acquainted with the Applicant's neighbour Shankar Waydande, Laxmi Waydande and Madhuri Waydande. Shankar had offered her to drop her at her parent's house. She admitted that when she was residing with the Applicant, she used to help his family in daily household work. There were other neighbours residing in the neighbourhood. She admitted that she herself, the Applicant and the Applicant's family had decided that they should get married. The Applicant's mother had given her a Saree and Mangalsutra. She had liked that Saree. The marriage was performed by a priest. She admitted that her marriage with the Applicant had taken place as per their rites and customs and after marriage, they had visited the temples. She also admitted

that she had informed her mother that she got married with the Applicant and at that time, her mother had told her to reside happily with the Applicant. She admitted that even after 14/04/2020, she used to regularly talk with her mother telephonically. The Respondent No.2 used to visit Government dispensary at Borgaon. She further admitted that since the Applicant was from different community, her mother and aunt were opposing their marriage. She further admitted that since there was difference of opinion between the Applicant and herself and as there was dispute, she got angry with the Applicant and therefore she had called her mother, who came with the Respondent No.2's aunt at Borgaon and then the Respondent No.2 left with them for Islampur. After that, she used to reside with her mother and had given birth to her daughter at her parents' place. After the birth of their daughter, they had informed the Applicant's family. The Applicant's family had visited the Respondent No.2's house. Even after that, for a few days she used to reside with her parent's house and then used to go back with the Applicant. She further admitted that the Applicant used to take her daughter to the Doctor.

12. All these admissions clearly go to show that the Respondent No.2 had willingly married the Applicant and they were residing together after getting married. The Respondent No.2 gave birth to her daughter after their marriage. It was a purely consensual relationship. As of today, their daughter is residing with the Applicant's family. The Respondent No.2 is married to someone else. The age of the Respondent No.2 is sought to be proved by the Applicant on the basis of SSC Board certificate. However, it will have to be decided as to whether that certificate is merely produced or is properly proved by the prosecution, and whether it was a genuine certificate. This is a crucial aspect of this case. Apart from that fact, ultimately, if the age is not proved, it clearly appears to be a consensual relationship. The Applicant and the Respondent No.2 had got married. A girl child was born, who is at present with the Applicant's family. The Applicant is a young man, who is sentenced to suffer rigorous imprisonment for 20 years. If ultimately, his application for bail is rejected, he will suffer irreparable loss and his entire life will be spoiled. All these issues

will have to be examined seriously. Therefore, at this stage, I am inclined to grant bail to the Applicant.

13. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.1166 of 2024, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or two sureties in the like amount.
- (ii) The Applicant shall not make any attempt to contact the Respondent No.2.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)