IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 ANTICIPATORY BAIL APPLICATION NO. 1892 OF 2023

BIBHISHAN S/O. ARJUN MUNDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...
Advocate for Applicant : Mr.Mahendra P. Gandle
APP for Respondent-State : Mr.K.K.Naik
Advocate for Respondent no.2 : Mr.K.B.Jadhavar
...
WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 211 OF 2024 IN ABA/1892/2023
...

CORAM : MEHROZ K. PATHAN, J.
DATE : 24.02.2026

P.C. :

1] Heard the learned counsel for the applicant and the learned APP for the respondent-State.

2] The applicant has approached this Court seeking anticipatory bail in connection with FIR being Crime No. 610/2023, dated 09.10.2023, registered with Kaij Police Station, District Beed, for the offence punishable under Sections 376 of IPC and under Section 4 and 6 of the Protection of Children from Sexual Offence Act, 2012.

3] The learned counsel for the applicant submits that this Court, vide order dated 09.11.2023, had protected the applicant with condition to co-operate with the investigation agency. He further submits that the victim is stated to be 17 years of age in the FIR, however, specific plea is raised before the Sessions Court that the victim is major. He further submits that the prosecution has recorded statement of the girl under Section 164 of the Criminal Procedure Code wherein the victim girl has specifically denied allegations made in the FIR. The father of the victim girl has deliberately implicated the present applicant in the present crime. Not only in the present crime but also subsequent Crime No.30/2024, registered with Kaij Police Station, Dist. Beed, for the offence punishable under Section 363, 376, 376 (2) (N) of the IPC and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act. Taking into consideration the statement recorded under Section 164 of the Criminal Procedure Code of the victim by the prosecution in the present Crime No.610/2023

registered with Kaij Police Station, this Court, vide order dated 22.10.2024 passed in ABA No.611/2024, had protected the present applicant by granting ad-interim anticipatory bail. The same may be confirmed.

4] The investigation papers are made available by the learned APP, which shows the date of birth of the girl is 15.05.2006. Thus, the girl appears to be 17 years at the time of date of incident. The applicant is aged 24 years, having consensual love relationship with the complainant. The girl was at the age of understanding. The Division Bench of the Bombay High Court in the case of **Sunil Mahadeo Patil Vs. State of Maharashtra** reported in **ABC 2016 (1) 34 Bom Acquittal & Bail Cases** has observed as under :

> **7.** In the case of S.Varadarajan (supra) though the age of consent though as per law was 18 years, when the girl eloped with the accused, she was approximately 17 years and 9 months old. The Hon'ble Supreme Court in the case of S.Varadarajan has distinguished Section 361 on the point of taking from the guardian or enticing the girl and the girl herself leaving the house of the parents of her own

and accused allowing her to be in his company and has held that it not a case of rape. In the case of S. Varadarajan, the matter was finally heard and the accused was convicted. In appeal, the decision of the Hon'ble Supreme Court can be culled out that if a girl takes initiative or she is active in taking decision of going away with the boy and she understands the meaning of man-woman relationship and of marriage, then the rigor of offence is reduced.

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.

5] The learned counsel for the applicant informs

that the applicant is now married with the victim girl after attaining age of majority.

6] The prosecution also does not dispute that the applicant has co-operated with the investigation in pursuance to the interim order dated 09.11.2023.

7] Thus, taking into consideration aforesaid submissions and the observations of the Hon'ble Supreme Court in the case of **S. Varadarajan Vs. State of Madras**, reported in **AIR 1965 SSC 942,** I am inclined to protect the present applicant in exercise of powers under Section 482 of the Criminal Procedure Code. Hence the following order :

O R D E R

A) The Anticipatory Bail Application is allowed.

B) The interim order dated 9th November, 2023 is hereby confirmed. The applicant is directed to attend the concerned police station as and when called by the Investigating Officer till completion of investigation and filing of the charge sheet.

C) The Applicant shall also cooperate with the investigation.

D) The Applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence, in any manner.

8] Needless to say, violation of any of the aforesaid conditions shall entitle the prosecution to seek cancellation of the anticipatory bail.

9] The observations made herein above are prima facie in nature and shall not influence the Trial Court while deciding the case on its own merits.

10] The Anticipatory Bail Application is disposed of accordingly.

11] Application for cancellation of Bail No.211 of 2024 also stands disposed of.

[MEHROZ K. PATHAN]
JUDGE

DDC