

Cri. BA No.3279/2024

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in C.R. No. 389/2024

MHPU010088452024

Presented on : 03.06.2024

Registered on : 03.06.2024

Decided on : 03.08.2024

Duration : 2-months 00-
days

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PUNE

CRIMINAL BAIL APPLICATION NO. 3279/2024

IN

C.R. NO. 389/2024

Deepak Sanjay Bairwa)
R/at Ward No. 7 Kajipura Mohalla, Marwar,)
Rajasthan.)
) .. Applicant/Accused

V/s.

The State of Maharashtra)
Through Sr. PI)
Bharati Vidyapeeth Police Station.)
) ..Respondent/Prosecutor

Appearance :

Ld. Adv. Sanket Chorge, for the applicant/accused.

Ld. Spl. PP. Shri. Konghe, for the respondent/prosecutor.

CORAM : K.P KSHIRSAGAR
SPL. JUDGE UNDER POCSO ACT,
PUNE

DATE : 03/08/2024

ORDER

This is an application taken out by applicant/accused Deepak Sanjay Bairwa under section 439 of the Code of Criminal Procedure, for enlarging him on bail in C. R. No. 389/2024 registered at Bharati Vidyapeeth police station, Pune for the offences punishable under Section 376, 376(2)(n), 376(3), 506 of the Indian Penal Code (hereinafter referred as "I.P.C.") and under Section 3,4 of The Protection of Children from Sexual Offence Act, 2012 (hereinafter referred as "POCSO Act").

2. Perused the application, documents filed therewith, reply of the prosecution and informant and material on record. Heard, arguments advanced by learned Advocate for applicant/accused and learned Spl. PP. In spite of issuance of notice, informant/victim failed to appear and therefore, they could not be heard.

3. Learned Advocate for applicant/accused submitted that, this is the first bail application taken out by applicant/accused and previously bail application taken out by applicant/accused in the present crime is not rejected by any court. No other bail application taken out by the applicant/accused in respect of the present crime is pending in Hon'ble High Court or any superior court. Learned Advocate for applicant/accused argued that, applicant/accused was arrested on 09.05.2024 and

since then he is in judicial custody. Material on record i.e. prosecution case itself reveals that victim and applicant/accused were in love relationship and they were having consensual sexual relations. Age of the victim at the time of alleged incident is more than 16 years and therefore she was of adolescent age. Applicant is 20 years old only. Investigation is almost completed. Therefore, there appear no necessity for further detention of accused. No criminal antecedents are attributed to applicant/accused. Therefore, Ld advocate for applicant/accused submitted that application be allowed. Ld. Advocate for applicant/accused kept his reliance on following citations.

- i] Anirudha Radheshyam Yadav Vs. The State of Maharashtra, 2020 ALL MR (Cri) 1351 and*
- ii] Sunil Mahadev Patil Vs. The State of Maharashtra, 2015 ALL MR (Cri) 1712.*
- iii] Imran Iqbal Shaikh Vs. State of Maharashtra and another in Bail Application No. 997 of 2022 dated 26.04.2023 of Hon'ble Bombay High Court .*
- iv] Mrigraj Gautam @ Rippu Vs. State of U.P in Criminal MISC Bail appln. No. 45007 of 2023 dated 26.10.2023.*

Court has gone through observations made therein.

4. On the other hand, Ld. Spl. P.P argued that, the offence alleged is of serious nature. Applicant/accused may continue to commit such offence if he is released on bail. As the victim was minor on the date of incident, her consent is immaterial. Moreover

there is possibility of tampering of prosecution evidence. Therefore, Ld. Spl.PP submitted that, bail application be rejected.

5. From the matter on record it appears that, applicant/accused is alleged to have committed offence punishable under sections 376, 376(2)(n), 376(3), 506 of the I.P.C. and under Section 3,4 of the POCSO Act. The punishment provided for the above offences may extend to imprisonment for life. From the appreciation of the material on record it is clear that 60 days from the date of arrest of applicant/accused are already elapsed and investigation is already completed and Spl. Case No. 848/2024 is already filed. From the appreciation of the F.I.R. and documents produced by applicant/accused and prosecution, it appears that victim was of adolescent age at the time of alleged incident.

6. From the material i.e. F.I.R, it appears that in the F.I.R. itself, informant has stated that victim and applicant/accused were having love relationship. Victim in the history stated before the medical officer that she was having friendship with the accused since three years and they were in love relationship and they had consensual sexual intercourse. From the appreciation of matter on record, prima-facie, it reveals that victim and accused were having love relationship and they had consensual sexual intercourse. Considering the age of victim at the time of alleged incident, prima-facie, it appears that victim had sufficient knowledge and capacity to know full import of what she was doing and she had voluntarily joined accused. From the appreciation of matter on

record, prima-facie, it appears that there was no forcible penetrative sexual assault on the victim. In the case of **Mrigraj Gautam @ Rippu Vs. State of U.P in Criminal MISC Bail appln. No. 45007 of 2023 dated 26.10.2023**, Hon'ble Allahabad High Court observed that "POCSO Act was never meant to criminalize consensual romantic relationship between adolescents". In view of the observations in the case of Sunil Mahadeo Patil Vs. State of Maharashtra and Anirudha Radheshyam Yadav Vs. The State of Maharashtra (cited supra) and considering the age of victim and case of victim, prima-facie, alleged act appears to be consensual and at the time of incident, victim appears to have capacity and knowledge to know full import of what she was doing. Therefore, there appears many mitigating circumstances in favour of the applicant/accused. Moreover, considering material on record, prima facie there appear reasonable grounds to believe that applicant/accused may not be guilty of the offence.

7. Admittedly, investigation is completed and final report is filed. Moreover applicant/accused appears to be very young i.e. of 20 years old. From the material on record applicant/accused appears to be permanent resident of Rajasthan. Mere fact that he is resident of Rajasthan, it cannot be said that he may abscond and he will not appear before the Court. Therefore, prima-facie applicant/accused appears to have roots in the community and therefore applicant/accused is not at a flight risk. No criminal antecedents are attributed to the applicant/accused. Moreover, it

appears that, applicant/accused is in custody since 09.05.2024 and now nothing is to be recovered from applicant/accused.

8. Personal liberty is most precious of all fundamental rights. There is presumption of innocence unless the guilt is proved. The object of the bail is to secure the attendance of the accused at the trial and the object is neither punitive and preventive. From the material on record prima facie, it appears that, applicant/accused had co-operated during the investigation. Applicant/accused has also undertaken to co-operate during the trial. From prima facie appreciation of the material on record, presence of applicant/accused is likely to be secured even if he is released on bail. Moreover, interest of the prosecution can be safeguarded by imposing certain conditions. Trial is not likely to be concluded in near future. Therefore, considering the above discussion and prima facie appreciation of material on record there appear no necessity for further detention of the accused for facilitating further trial.

9. Considering the nature of offence, gravity of offence and antecedents of accused and from prima facie appreciation of the material on record release of the accused on bail at this stage is not likely to be prejudicial to the interest of society at large. Therefore, there appear justifiable grounds for releasing applicant/accused on bail at the stage. As such present application deserves to be allowed. Hence, the following order

ORDER

1. Criminal Bail Application No. 3279/2024, is allowed.
2. Applicant/accused Deepak Sanjay Bairwa be released on bail in C.R. No. 389/2024 registered at Bharati Vidyapeeth police station, Pune for the offences punishable under Section 376, 376(2)(n), 376(3), 506 of the Indian Penal Code (hereinafter referred as "I.P.C.) and under Section 3,4 of The Protection of Children from Sexual Offence Act, 2012, on executing personal bond of Rs.50,000/- only (Rs. Fifty thousand only) with one or more sureties in like amount on the following conditions :
 - (a) Applicant/accused shall not tamper with prosecution evidence or influence the prosecution witnesses in any manner.
 - (b) Applicant/accused shall co-operate in early disposal of the trial.
 - (c) Applicant/accused shall not commit any criminal offence while on the bail.
 - (d) Applicant/accused and his surety shall provide their respective mobile numbers and present address and proof of residence at the time of execution of the bail bond/surety bond.
3. Bail Application No. 3279/2024 is disposed of accordingly.

(Pronounced in open Court)

Date : 03/08/2024.

**(K.P. Kshirsagar)
Spl. Judge under POCSO Act,
Pune**

Dictated on : 03.08.2024

Transcribed on : 03.08.2024

Checked on : 03.08.2024

Signed on : 03.08.2024