

Cri. BA No. 3231/2024

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in C.R. No. 91/2024

MHPU01-009101-2024



Presented on : 01.06.2024

Registered on : 01.06.2024

Decided on : 31.07.2024

Duration : 01 month, 30
days

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PUNE

CRIMINAL BAIL APPLICATION NO. 3231/2024

IN

C.R. NO. 91/2024

Kiran Balaji Kamble)
R/at Dayabiri Road, Kahde Wasti,)
Aliyabad, Tq. Dist. Vijaypur,) .. Applicant/Accused
Permanent, Nilanga, Dist. Latur
Pune

V/s.

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

Appearance :

Ld. Adv. A.A. Ghorpade, for the applicant/accused.

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

CORAM K.P. KSHIRSAGAR
: **ADDL. SESSIONS JUDGE, PUNE**
DATE : 31/07/2024

ORDER

This is an application taken out by applicant/accused Kiran Balaji Kamble under section 439 of the Code of Criminal Procedure for enlarging him on bail in C. R. No. 91/2024 registered at Uruli Kanchan Police Station, Pune for the offences punishable under sections 376(2)(n), 363 of the Indian Penal Code (hereinafter referred as "I.P.C.") and under sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as "POCSO Act").

2. Perused the application, documents filed therewith, reply of the prosecution, reply of informant and material on record. Heard, arguments advanced by learned Advocate for applicant/accused and learned Spl.PP. As the victim/informant was absent, 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 26.04.2024 and since then he is in judicial custody. Material on record i.e. statement of victim and medical examination report, 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 19 years old only and he is student. Investigation is already completed and final report bearing Spl. Case No.613/2024 is already filed and said case is pending in another Court. 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.

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(2)(n), 363 of the I.P.C. and under sections 6 and 12 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 investigation is already completed and final report is already filed in the Court. From the appreciation of the material in the copy of final report and FIR, it appears that victim was of adolescent age at the time of alleged incident.

6. From the copies of final report, in Spl.Case No. 613/2024, it appears that in history stated before the doctor at the time of medical examination, victim herself has stated that she was having love relationship with accused since 2021 and she had eloped with him. 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 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 is not 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 19 years old. From the material on record applicant/accused appears to be permanent resident of Peth, Tal. Nilanga, Dist. Latur. 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 26/04/2024 and now nothing is to be recovered from applicant/accused. Moreover, applicant/accused and victim are not residents of same vicinity and therefore, there appear no possibility of tampering of prosecution evidence.

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 the present application deserves to be allowed. Hence, the following order

ORDER

1. Criminal Bail Application No. 3231/2024, is allowed.
2. Applicant/accused Kiran Balaji Kamble be released on bail in C.R. No.91/2024 registered at Uruli Kanchan Police Station, Pune for the offences punishable under sections 376(2)(n), 363 of the Indian Penal Code and under sections

6 and 12 of the Protection of Children from Sexual Offences Act, 2012 on executing personal bond of Rs.50,000/- only (Rs. Fifty thousand only) with surety 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. 3231/2024 is disposed of accordingly.

(Pronounced in open Court)

Date : 31/07/2024.

**(K.P. Kshirsagar)
Addl. Sessions Judge, Pune**

Dictated on : 31/07/2024

Transcribed on : 31/07/2024

Checked on : 31/07/2024

Signed on : 31/07/2024