

MHGA010008922022



IN THE COURT OF SESSIONS AT GADCHIROLI

(Presided over by Shri. Uttam M. Mudholkar)

(Additional Sessions Judge)

Cri. Bail Appln. No. 243/2022

Crime No.08/2022

Loknath Siril Minj

Age 22 yrs, Occ. Labour,

R/o. Haletola,

Tah. - Etapalli, Dist. Gadchiroli

... **applicant/
accused**

- Versus -

State of Maharashtra

Through PSO, PS. Jarawandi,

Tahsil - Etapalli, Dist.- Gadchiroli

... **Respondent**

Adv. Shri. Satish Barsinge for the applicant

A.P.P. Shri. N.M. Bhandekar for the State

ORAL ORDER below Exh.1

(Passed on 18.11.2022)

1] This is an application moved by accused seeking his release on bail in Special (POCSO) Case No.78/2022 arising out of Crime No. 8/2022 for the offences punishable u/Ss. 376 & 376(2)(n) of the Indian Penal Code, 1860 (for short "IPC") and Sec. 4 & 6 of Protection of Children From Sexual Offences Act (For short "POCSO Act") registered at Jarawandi Police Station of Gadchiroli district.

2] The brief facts, which led to the filing of the charge-sheet, can be summarised as under -

That the informant i.e. victim girl, who was 17 years and 6 months old, was admitted in the hospital for delivery of a child and the medical officer noticed that she was minor and therefore, intimation was given to police. Accordingly, in presence of police her statement came to be recorded wherein she disclosed that she was in deep love with accused and since summer season of 2020 she has been staying with accused, as if she was his legally wedded wife. They repeatedly indulged into sexual intercourse, which resulted into carrying pregnancy by her and therefore, she was admitted in the hospital for delivery of a child. Her such statement was treated as FIR and offences as mentioned above came to be registered. In the due course, the accused came to be arrested on 22.09.2022 and investigation was started. Presently accused is in the judicial custody.

3] Heard Learned advocate Shri. Satish Barsinge for the applicant and learned A.P.P. Shri. N.M. Bhandekar for the State. Perused the documents filed along with the application, reply filed by Ld. A.P.P., as well as the victim girl and charge-sheet.

4] It was vehemently submitted by Ld. Adv. Shri. Barsinge for the applicant that, the victim girl was 17 years and 6 months old when the alleged occurrences took place and was mentally matured to know the consequences of her acts which entitles the applicant to have his release on bail. He further

submitted that now the investigation is completed and therefore no purpose would be served by placing him in further judicial custody and as such, he requested to enlarge the applicant on bail. In support of his submission, he has relied upon the case laws in the following cases -

- A] Sunil Mahadeo Patil vs. State of Maharashtra in the bail application No.1036/2015 decided on 3.8.2015 by Hon'ble High Court,**
- B] Anirudha Radheshyam Yadav vs. State of Maharashtra, Cri. Bail Appln. No. 2632 of 2019 decided by Bombay High Court dt. 09th January 2020,**

5] The relevance of the above case laws is being discussed at the appropriate place in the later part of this order.

6] Per contra, learned A.P.P. Shri. Bhandekar vehemently submitted that the victim was minor and therefore, her consent is immaterial. He further submitted that in the event of release on bail, the accused may threaten the witnesses including the victim girl and also endanger her life. As such, he requested to reject the application.

7] I have carefully gone through submissions of both the sides and record. The reading of the some of the investigation papers go to show that on the date of lodgement of the FIR the victim was admittedly 17 years and 6 months old. It can be gathered from the statement of the victim girl recorded on 19.09.2022 by police and under Sec. 164 of Cr.P.C. by the Judicial Magistrate that she was in deep love with

accused and therefore she started to stay in his house as if she was his wife. Accordingly, they frequently had sexual intercourse. Admittedly, there is no allegation in such statements that accused lured her or gave false promise of marriage and thereby committed sexual intercourse with her and thereafter, turned blind eye to his assurance. It appears that both of them indulged into sexual activity for number of times and no hue & cry was raised or no resistance in true sense was offered by the victim girl for such indulgence. Having regard to these aspects, it appears that though the victim girl was technically minor, she was mentally matured to know the nature and consequences of her own act. It appears that she has taken active part in all the activities that took place between herself and accused. In the considered view of this Court, the above discussed aspects are certainly favourable and mitigating circumstances for taking liberal view in grant of bail to the present applicant.

8] In this respect, Ld. advocate for applicant has rightly placed his reliance on the following two case laws -

A] **Sunil Mahadeo Patil vs. State of Maharashtra** in the bail application No.1036/2015 decided on 3.8.2015 by Hon'ble High Court, wherein following observations have been made -

“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”

“12. The overall considerations while deciding such applications can be summed up as-

When a boy and 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 the Actor not.*
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.*
- (vi) Whether any chance of tampering 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.”*

B] Anirudha Radheshyam Yadav vs. State of Maharashtra, Cri. Bail Appln. No. 2632 of 2019 decided by Bombay High Court dt. 09th January 2020, wherein it is observed that -

“No doubt, that the applicant, under the preview of POCSO Act, is a minor, however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant.”

9] The ratio laid down in both the above case laws can usefully be applied to the case at our hand.

10] Admittedly, since 22.09.2022 the applicant is behind the bars. The investigation is completed. Therefore, now nothing is to be seized or recovered on the pointing of the applicant. His further detention in Judicial Custody appears to be unwarranted. The investigation officer while opposing the bail application has mainly resisted the application by contending that in the event of his release repetition of crime and tampering of the evidence is possible. I have carefully considered this resistance, which appears to be baseless and without any justification. It requires to be noted that the victim girl has filed reply below Exh.6 and has unconditionally consented for grant of bail. This consenting reply has been tendered on record when the applicant/accused is behind the bars and naturally unable to exert any pressure on the victim girl. Therefore, such consent for grant of bail appears to be voluntary and acceptable. Had there been, in the eyes of victim girl, any apprehension of tampering of her evidence by the applicant/accused then this type of consenting reply would not have come on record. Therefore, the apprehension raised by the I.O. in the reply of Exh.5 while opposing the bail application appears to be without any foundation and justification. Admittedly, statement u/Sec.164 of Cr.P.C. of the victim girl has already been recorded. Therefore, now there is least scope for applicant/accused to tamper with her evidence. Even otherwise, stringent condition can be imposed against the

accused so that the interest of the victim girl as well as prosecution can be safeguarded. Prima facie there appears to be no intention on the part of accused to commit rape on the victim girl. Under these circumstances and having regard to the special facts & present circumstances of the matter, compelling the applicant to remain in judicial custody till the conclusion of trial would serve no purpose. Similarly, the applicant is local inhabitant and therefore there is least possibility of his abscondance. There is no criminal antecedent to the discredit of applicant. Apart from this, he is ready to abide by all the terms and conditions put by this Court while granting bail. Having regard to all the above discussed aspects as well as the case laws discussed above, it appears to me that no fruitful purpose would be served by putting the applicant behind the bars, till the conclusion of the trial, which may take sufficient long time and the rejection of bail may amount to pretrial conviction. Thus, having regard to the total circumstances, in the considered view of this Court, the application deserves to be allowed. Hence, the following order is passed to meet proper ends of justice.

ORDER

1] The Cri. Bail Application No.243/2022 in Special (POCSO) Case No.78/2022 arising out of Crime No. 8/2022 of Police Station Jarawandi is allowed as under -

2] Applicant **Loknath Siril Minj** be released on bail on his furnishing P.R. and Surety Bond of Rs. 25,000/- of one or two sureties, on following conditions -

..8.. Cri.Bail A. No.243/2022 (Exh. 1)

- a. The applicant shall not tamper the prosecution evidence in any manner.
- b. He shall not try to contact, directly or indirectly, the victim girl till conclusion of trial.

Date : 18.11.2022

(U.M. Mudholkar)
Additional Sessions Judge,
Gadchiroli