

Special (POCSO) Case No. 84 of 2024*The State Vs. Vijay Ramesh Pithe***Order Below Exh.03.**

1. Applicant / accused **Vijay Ramesh Pithe**, resident of Chandori, Tal. Niphad, Dist. Nashik has filed this application for bail after filing of charge-sheet under section 439 of Cr.P.C.. He is arrested in Crime No.207/2024 registered at Saikheda Police Station for the offences punishable under sections 64, 65(1), 79, 115(2) of Bhartiya Nyaya Sanhita, 2023 and under sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. Brief facts leading to the case of prosecution are as under :

Victim 'K' lodged complaint with Saikheda police station on 07/09/2024 stating therein that she is taking education in 11th standard. Her date of birth is 05/04/2009. She was acquainted with accused Vijay Ramesh Pithe since she was in 8th standard. They were in love relations. In the month of April 2023, the accused take her to house of his friend where they had physical relations. Thereafter, they were meeting behind Government Hospital, Chandori where they had physical relations with each other for 4 to 5 times. On 02/09/2024 the victim was alone in the house, Vijay called her and went to her house and had intercourse with her. On 05/09/2024 in the afternoon, Vijay called the victim on mobile but as her mother was in the house, therefore, the victim could not pick-up his phone. Thereafter, victim went to the house of Vijay and asked him not to

call her again as her mother used to remain in the house. Vijay asked her as to why she disclosed their relations with her mother and thereafter, he refused to marry with her. On that count, quarrel took place between them. In the evening at about 05.30 p.m. victim again went to the house of the accused. His mother Asha and brother Sanjay were also present in the house. The victim asked his mother as to why Vijay is refusing to marry her but she said that Vijay is of tender age and asked her to marry with her elder son Sanjay. On that count, quarrel took place and thereafter, the informant lodged complaint against Vijay, his mother and brother. On the basis of her complaint, above-said crime came to be registered against accused persons.

3. Heard learned Advocate for applicant / accused. He submitted that present the applicant / accused is falsely implicated in this crime. There was love affair between accused / applicant and victim. The victim herself has admitted this fact in the complaint. From the perusal of FIR, it is crystal clear that as the accused refused to marry with her, therefore, she lodged false complaint against accused and his family members. The victim never raised hue and cry at any time when they had physical relations. Investigation of the crime is completed. Charge-sheet has been filed against the accused in the Court. The accused is in custody since 07/09/2024. He has no criminal antecedents. There is no need to keep the accused behind the bars for indefinite period. It will amount to pre-trial detention. The accused is ready to abide conditions of the bail. Therefore, he prayed to allow the application.

4. Heard learned A.P.P. Shri. R.L. Kapse for the State. He vehemently submitted that applicant has committed serious offence of rape. Prima facie case is made out against the accused. At the time of offence the age of the victim was about 15 years 5 months . She was minor. Her consent is no consent in the eyes of law. There is every possibility that the accused may tamper with the prosecution evidence, if released on bail. The prosecution has proved that there were sexual intercourse between accused and victim. According to the medical report, her hymen is ruptured. Therefore, considering seriousness and gravity of the crime, he prayed to reject the application.

5. Upon hearing the learned Advocate for applicant / accused and learned A.P.P. and on perusal of the charge-sheet, it appears there were love relations between accused and victim since last about 4 years. They had experienced physical relations many times. From the statement of the victim, it is crystal clear that there were consensual sexual relations between accused and the victim. The victim is aged about 15 years and 5 months. She is at the verge of majority. She was aware of consequences of her acts. Main contention of the informant is that accused kept physical relations with her by giving false promise of marriage. From the perusal of medical examination papers on record, it appears that the victim has not sustained any injury. No physical violence can be seen from the perusal of medical reports on record. From the statement of the victim, it is crystal clear that she was in love with the accused. It is also crystal clear from the contents of FIR that the victim lodged

complaint against accused only when he refused to marry with her.

6. In the case of **Vishal Prakash Kharade Vs. The State of Maharashtra – DLD (Cri) 2022 – 1816**. It is held that, “ In case of sexual offences, when the act is the outcome of love affair between the accused and victim, accused may be given the benefit of grant of bail. When the accused is young, he deserves a chance of reformation, so he may be released on bail until guilt against him is proved ”. Ratio laid down by the Hon’ble High Court in the case is squarely applicable to the case in hand. In this case, age of the accused / applicant is 18 years and admittedly, there were love relations between accused and victim.

7. Learned Advocate for the accused placed his reliance on the decision of Hon’ble Bombay High Court in case of **Sunil Mahadev Patil Vs. State of Maharashtra – BA No. 1036 of 2015 dated 03/08/2015**. Hon’ble Lordship of the Bombay High Court has observed that

“ This is a usual case of a boy and girl having an affair and then they eloped and got married. As the girl is minor, the boy is sent behind the prison because of the complaint lodged by the parents of the prosecutrix ”.

“ Under such circumstances, considering the law, facts and discretionary powers vested with the Court, it is difficult for the Court to decide the issue of the regular bail under Section 439 of Cr.P.C. Before dealing with this issue, which is faced often by the Courts, it is necessary to deal with the provisions under Section 375 and 376 of the Indian Penal Code.”

“ In the case of S. Varadarajan though the age of consent though as per law was 18 years, when the girl eloped wit 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 going away with the boy and she understands the meaning of man-woman relationship and of marriage, then the rigor of offence is reduced.”

“ It is to be noted that the case of S. Varadrajana was decided I 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 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 circumstances. 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.”

“ Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the boy to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with a view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have

considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases. ”

8. From the perusal of charge-sheet, it is crystal clear that the victim and accused were in love relations. No violence can be seen with the victim by the accused in the medical report. The victim has categorically stated in her complaint that she was in love with the accused. The victim is aged about 15 years and 05 months. She is at the verge of majority. There is no explanation from the prosecution as to why the victim did not raise hue and cry when the accused committed alleged rape on her on many occasions. She has understanding of the consequences of her act. The accused has no previous antecedents. Certain conditions can be imposed on the accused to prevent him from tampering with the prosecution evidence and giving threats or intimidation to the victim.

9. Considering all these facts and circumstances on record and considering the observations of Hon'ble Bombay High Court in the case of **Sunil Mahadev Patil Vs. State of Maharashtra – BA No. 1036 of 2015 dated 03/08/2015**. I found that present case is also a case of love affair in between accused and victim. Investigation of the crime is completed, charge-sheet has been filed in the Court, therefore, there is no need to keep the accused behind the bars for indefinite period and therefore, the application deserves to be allowed. In the result, I pass the following order.

ORDER

- 1] Application is allowed as under.
- 2] The applicant / accused **Vijay Ramesh Pithe**, resident of Chandori, Tal. Niphad, Dist. Nashik be released on bail on furnishing PR Bond sum of Rs. 50,000/- (Rupees fifty thousand only) and one surety of like amount in connection with Crime No.207/2024 registered at Saikheda Police Station for the offences punishable under sections 64, 65(1), 79, 115(2) of Bhartiya Nyaya Sanhita, 2023 and under sections 4 and 6 of the Protection of Children from Sexual Offences Act.
- 3] The applicant/accused shall attend the Court scrupulously on every date and shall not tamper with the prosecution witnesses in any way and in any manner, particularly should not contact to the victim in any way and in any manner, personally or through electronic media, in default his bail is liable to be cancelled.
- 4] The applicant/accused shall not tamper with the prosecution evidence.
- 5] The applicant/accused shall not pressurize the prosecutrix, complainant and her family members in any way and in any manner.
- 6] The applicant/accused shall not indulge in any offence.
- 7] The applicant/accused shall make himself available and attend all Court dates.

- 8] The applicant/accused shall not abscond and furnish his address to the police alongwith address proof and mobile numbers.
- 9] The applicant/accused shall not leave India without the prior permission of the Court.
- 10] Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

(Dictated and pronounced in open Court.)

Date : 19/11/2024

(A.V. Gujarathi)
Special Judge and Additional
Sessions Judge, Niphad.