

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO. 1813 OF 2020**

Amit Raoso Patil .. Applicant  
Versus  
State of Maharashtra .. Respondent  
...

Mr. Venkatesh Shastry for the Applicant.

Mrs.M.M.Deshmukh, APP for the State.

**CORAM: BHARATI DANGRE, J.**

**DATED : 9<sup>th</sup> SEPTEMBER, 2020**

**P.C:-**

1. The applicant, aged 34 years, was arraigned as an accused in Crime No.47 of 2020 registered with Abhiruchi Police Station, Sinhgad Road, Pune. The crime came to be registered on a complaint by a minor victim girl and based on which, Sections 376, 354-D, 506 of the Indian Penal Code were invoked. Since the victim was minor, provisions of Sections 3, 4, 11 and 12 of the Protection of Children from the Sexual Offences Act, 2012 were also invoked.

2. The sum and substance of allegation contained in the complaint is to the effect that the victim, who was 17 years old and pursuing her education in 11<sup>th</sup> standard in a college at Pune, was known to the applicant, as he is a family friend and a

business partner of her father. The victim girl was acquainted with the applicant since about two and half years. It was alleged by the victim that from the month of October, 2019, the applicant started texting her on her Whatsapp and expressed his liking towards her and also sought sexual favours from her, which was turned down by the victim girl. Since the applicant was a family friend, the girl did not disclose that she was in receipt of indecent messages from the applicant. On 6<sup>th</sup> December, 2019, the applicant forwarded her a message that he intended to discuss some important family matter with her and asked her to meet on the very next day. On next day, when she was waiting for a bus to arrive, the applicant approached her on two wheeler and she was asked to accompany him. She was then taken to a nearby farmhouse and by making an emotional appeal and threatening that she if did not agree, he will commit suicide, she was forced to commit sexual intercourse with him. She was also threatened that she should not disclose the incident to her parents and if she does so, it would adversely affect the partnership business. The second incident is cited, when she was again forced in similar act at his residence. The third incident is referred to be of 1<sup>st</sup> January, 2020 when the victim was asked to come to the bus stop and taken to same farmhouse and he indulged with her physically.

3. On 12<sup>th</sup> January, 2020, the victim disclosed the incident to her parents and after due deliberation, the report came to be

lodged on 30<sup>th</sup> January, 2020. The victim girl was subjected to medical examination in Sassoon General Hospital on 31<sup>st</sup> January, 2020. On completion of investigation, the charge-sheet came to be filed and the earlier bail applications filed by the applicant prior to filing of charge-sheet and subsequent to filing of charge-sheet came to be rejected.

4. The learned counsel for the applicant would vehemently argue that the age of the victim is 17 years and he submit that though she is not major in legal parlance, she had attained sufficient maturity to understand the consequences of her act and she was into relationship with the applicant on her own volition. The learned counsel invited my attention to various chat messages and his submission is that the chat clearly reflect that there was a love relationship between the two. He, however, deny that he is responsible for any such sexual assault on the victim. He would also express his dismay over the fact that the complaint refers to three incidents of sexual overt act and the first being of 7<sup>th</sup> December, 2019. He would urge that if as per the version of the victim girl, she was subjected to forcible sexual intercourse on three occasions, why she kept mum for a long period of time. He submit that it was only on 30<sup>th</sup> January, 2020, complaint came to be lodged by her. It is the submission of the learned counsel that there is no witness to the said incident and it is only her mother whose statement is included in the investigation, which is a replica of the victim

girl's statement. He also pose a question as to why this girl did not block his number if he was harrasing her by texting. He has relied upon an order passed by me in Bail Application No.817 of 2020 in case of Suraj Paithankar Vs. State of Maharashtra and he particularly rely on paragraph numbers 6 and 7 and would submit that the facts of the case are identical to the case of the applicant and he is also entitled to be released on bail in terms of the said order.

5. With the assistance of the learned counsel for the applicant and the learned APP, I have perused the material on record. The victim girl is aged 17 years and she was pursuing her education in 11<sup>th</sup> standard. It is not in dispute that the applicant was known to her being a family friend and also a partner in her father's business. The complaint disclose that the applicant indulged the victim girl in Whatsapp chat. He posted messages stating that he was not happy in his family life. He also posted messages blaming his wife for the deteriorating relationship. He persuaded her to meet in seclusion as he wanted to discuss some important issue with her. The victim girl was made to ride on his motorbike and she was taken to a farm. The victim had narrated that there he spoke about his wife and started crying and expressed his love for her by stating that he likes her and he cannot lead his life without her. It is the applicant who forced himself upon her by threatening that he would commit suicide if she do not co-operate with him.

The victim girl has stated that she was petrified by the said incident and since she was made aware of the consequences if she disclose the incident to her parents, she kept mum. This incident was repeated on two occasions.

It is not very unlikely that a young girl aged 17 years became disquieted after the act of ravage and did not gather the courage to speak to her parents about the said incident. The victim girl was also conscious of the fact that the applicant was business partner of her father.

6. The counsel has argued that there is a delay of 18 days in lodging the FIR. There can be a justification for the said delay. The victim girl is in her prime youth and the incident must have created a turmoil in the life of the entire family. One fine day the victim girl became powerful, not because she was not scared, but she went on so strongly despite the fear. With the support of the family, the complaint came to be lodged. The argument of the learned counsel that the victim was conscious of the intentions of the applicant, but still decided to accompany him wherever he asked her to is also a strange argument. The girl is young, at this age expected to be indecisive and could not straightly refused when asked by the applicant, who is her father's friend. The response to the answer as to why the girl did not block the number of the applicant can also be the same. The submission that the testimony of the victim cannot be the sole ground to implicate

the applicant is also unfounded. Precedents do exist where in cases of rape, the convictions have been sustained solely on the basis of testimony of the prosecutrix, if it is found to be trustworthy. It all depends upon the outcome of the trial.

7. One thing is however clear that though the victim was adolescent, the applicant was a matured married man aged 34 years having two children. The whole episode of his indulging with a minor girl, a daughter of his business partner itself speaks of his intention. Going by the version of the learned counsel for the applicant that there was a love relationship or the relationship was on account of the advances made by the victim girl, the applicant was duty bound to bring this fact to the notice of her parents. He did nothing and the submission advanced is, they shared a love relationship.

8. The victim girl had specifically, in great detail, narrated three incidents where she was subjected to sexual harassment by the applicant and corroborating her statement is the medical report of the victim girl's examination. The report from Sassoon General Hospital, on examination of the victim on 30<sup>th</sup> January, 2020 after taking into account the history, clinical examination finding and laboratory reports is to the effect that there is vaginal penetration with no fresh physical injury at present. In spite of the said medical report on record, the learned counsel for the applicant submit that he is not responsible for such sexual indulgence with the applicant.

There is no apparent reason why the victim girl should particularly implicate the present applicant. When queried to this effect, the counsel submit that it is the father of the victim girl, who wanted to take advantage of the situation as the applicant is his business partner. This argument is simply noted to be not worth consideration as there is no material supporting this submission, but merely a guess work of the applicant and this is no thing but instance of Victim Blame.

9. The applicant has taken advantage of the fiduciary relationship, which he shared with the victim girl and put her in a vulnerable situation. Assuming but not accepting that the victim girl consented for maintaining the physical relationship, her consent is not a free consent. The penal code do not recognise the consent by a minor girl to be a consent in the eyes of law and in the present case, in the backdrop of narration by the victim, her consent can naturally be said to be induced by fiduciary relationship which she shared and on that count also, it is not a free consent.

10. The offence of rape as defined in Section 375 of the IPC, made punishable under Section 376, is attracted when a man commits an act of rape without the consent of the girl or when such consent is obtained by putting her in fear of death or of hurt. The hurt may be physical or mental. The consent of the victim girl under 18 years of age is also of no legal

consequences when it comes to an offence of rape punishable under Section 376.

11. The position of law is no more *res integra* on the point that the order passed in bail application will not create a binding precedent. Each case has to be decided on the basis of the facts involved and while considering release on bail, the gravity of offence, conduct of the applicant, his standing in the society are also some of the important factors. The reliance placed by the learned counsel in case of Suraj Paithankar is totally inapplicable in the present case as in the said case, the applicant was aged 21 years and the victim who was of 15 years 4 months and 23 days were in a friendly relationship and the case of the victim girl was, the physical relationship came to be established on account of promise of a marriage. Since the investigation conducted reflected consensual relationship though the girl was minor, the investigation was complete, the charge-sheet was filed and hence the applicant was released on bail. The facts involved warranted the said order.

12. "Rape" is just not a forcible intercourse, it means to inhabit and destroy everything. The applicant is seeking release on bail awaiting the trial. Considering the gravity of the accusation leveled against him and the testimony of the victim, which would be unfurled at the time of trial and in view of the aforesaid position emerging from the submission of the learned



counsel for the applicant based on the material on record, I am not inclined to release the applicant on bail. The observations made in the order are *prima facie* in nature, based on the material placed for consideration for a limited purpose of consideration of bail application and should not be considered as an expression/opinion on the merits of the matter at the time of trial.

13. The application is rejected.

**SMT. BHARATI DANGRE, J**