



Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4258 OF 2021

Arif Jainul Khan .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Bablu Jumman Shaikh a/w Vedkumar Chaudhary for the
applicant
Mr. A.A. Palkar, APP for the respondent – State
Ms. Seema R. Bithane, appointed advocate for respondent no.2
Mr. S.S. Ghagt, PSI, Malvani Police Station present
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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 13th MARCH, 2024.

P.C.

1. Heard learned Counsel for the applicant, learned APP and learned Counsel appointed to espouse the cause of the victim.
2. The applicant has been arrested by Malvani Police Station in connection with C.R. No.703 of 2019 for the offences punishable under Sections 376(2)(j)(n), 315, 318 of the Indian Penal Code r/w Section 6 of the Protection of Children from Sexual Offence Act 2012 (for short 'POCSO Act') on 28th August 2019.

3. Briefly stated, on 28th August 2019 PSI, Mr. Sagar Salve received an information that a person was about to dispose of a premature fetus. PSI Salve, therefore, immediately reached on the spot. He noticed a crowd and a person who was being assaulted. Upon being asked, the person (accused) informed the witness that he had illicit relations with the victim, who is his next door neighbour. Because of the illicit relations, she became pregnant. In order to conceal her pregnancy, the applicant had given her certain pills to cause her miscarriage. Accordingly, after consuming the pills which were given by the applicant, the victim suffered miscarriage on 28th August 2019. The applicant, thereafter, attempted to dispose of the prematured born fetus and was caught red handed. A crime was registered with the Malvani Police Station, investigation was conducted and a charge-sheet came to be filed.

4. I heard Mr. Shaikh, Counsel for the applicant. He submitted that there were two unsuccessful attempts to secure the bail in the trial Court. Counsel would argue that the applicant is languishing in Jail for about 4½ years. Since he was in love with the victim, he did not commit any offence as the victim was 17 years and 6

months old at the relevant time. Admittedly, the victim was below 18 years and, therefore, the provisions of POCSO Act has also been invoked by the Investigating Officer.

5. Learned APP and the learned Counsel for the victim opposed the application looking to the seriousness of the offence.

6. It is apparent from the record that the applicant not only did an act to intentionally prevent birth of a premature fetus but also attempted to destroy the evidence by taking the fetus for burying. The act of the applicant precisely attract Section 315 and 318 of the Indian Penal Code apart from Section 376(2)(j)(n) of the Indian Penal Code r/w Section 6 of the POCSO Act. Since the victim was below 18 years, he has been rightly prosecuted for the offences under the provision of POCSO Act also. Had there been real love with the victim, applicant would not have destroyed his own baby.

7. The trial Court, has, therefore, correctly observed that in case of his release there is every likelihood of his abscondence or even pressurising the witnesses. It is not shown whether the applicant has roots in the society, in the sense, he is a permanent resident of city of Mumbai. Statement of the victim also reveals that the

applicant committed forcible sexual intercourse resulting into her pregnancy and then forced her to consume the pills resulting in the abortion. Looking to the seriousness of the offence as well as possibility of influencing the witnesses and tampering the evidence, this is not a fit case for releasing the applicant on bail.

8. The application, therefore, stands rejected.
9. The trial Court shall expedite the hearing of the case.

(PRITHVIRAJ K. CHAVAN, J.)