

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-93-2020**

Vaseem Khan

... Applicant

Versus

State of Goa & Anr.

... Respondents

Shri Vibhav Amonkar, Advocate for the Applicant.

Shri P. Faldessai, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 11 DECEMBER 2020****ORAL ORDER:**

The applicant is the sole accused in Crime No.127/2020, registered by Porvorim Police Station. The alleged crime attracts sections 363 and 376 of IPC, read with sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act). Though initially even section 8(2) of the Goa Children's Act had been roped in, it was later dropped.

2. The facts, in brief, are that on 28.09.2020, the mother of the victim girl complained to Porvorim Police Station that the applicant kidnapped her minor daughter and had forceful sexual intercourse with her. The crime registered, the police arrested the applicant on the same day. Since then, the applicant has been in judicial custody.

3. As to the developments in the case, initially the victim girl refused to consent to a medical examination. Even the complainant-mother withheld her for her daughter's medical examination. On the other hand, the applicant was subjected to the medical examination. Still, the report was not conclusive about whether he had had any sexual intercourse recently or in the near past.

Later, crucially, the victim girl's statement was recorded under section 164 of Cr PC. As seen from the record, she has denied the entire incident and has gone on record asserting that her mother lodged a false

complaint at the behest of her elder daughter. Nevertheless, the applicant could not secure regular bail from the trial Court. Eventually, on 23.11.2020, the police filed the chargesheet, as well.

4. Shri V. Amonkar, the learned counsel for the applicant, after taking me through the record, has submitted that the applicant is innocent and has been framed in a false crime. After referring to all the documents on record, Shri Amonkar has also submitted that going by the victim's Aadhar Card, she was born on 30.01.2001. That means on the date of the alleged incident, she was no longer a minor. In the end, the learned counsel has urged this Court to allow the bail application not only because there is no prima facie case made out but also because the applicant has no criminal antecedents and the entire investigation has been completed.

5. On the other hand, Shri P. Faldessai, the learned Additional Public Prosecutor, has submitted that the crime involves a minor girl. Though the investigation has been completed, given the gravity of the offence, this Court may take a strict view. At any rate, he has joined the issue on the count the victim girl's age. According to him, though her identity card may have shown a particular date of birth; in fact, her school leaving certificate, which is more authentic, shows that she was a minor on the date of the incident. Therefore, he has urged this Court to dismiss the application.

6. Heard Shri Vibhav Amonkar, the learned counsel for the applicant; and Shri Pravin Faldessai, the learned Additional Public Prosecutor, for the respondent.

7. First, the investigation has been completed, and the chargesheet filed. Second, the applicant has no criminal antecedents, being a permanent resident of Goa. Third and most important is that the victim girl, even going by the prosecution version, was seventeen years old when the offence took place. She had been of intelligible age, suffering from no mental incapacity. In her statement under Section 164 of CrPC, she has,

on oath, denied the entire incident. At least, *prima facie*, the substratum of the case, as maintained by the prosecution, has collapsed.

8. Under these circumstances, I reckon that the applicant is entitled to the bail. I, accordingly, allow the bail application subject to these conditions:

ORDER

- (i) The application of bail is allowed.
- (ii) The applicant is directed to be released on bail on his executing P.R. Bond for ₹25,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned trial Judge.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned trial Judge.
- (iv) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (v) The applicant shall not commit similar or other offences.
- (vi) The applicant's failure to abide by these conditions will entail the prosecution to apply for the cancellation of bail now granted to the applicant.
- (vii) The Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

DAMA SESHADRI NAIDU, J.

NH