

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-BA-108-2020**

Pulmurga Gawander

... Applicant

Versus

State of Goa &amp; Anr.

... Respondents

Shri Vibhav Amonkar, Advocate for the Applicant.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

**Coram:- DAMA SESHADRI NAIDU, J.****Date:- 22 DECEMBER 2020****ORAL ORDER:**

The applicant is the sole accused in Crime No.76/2019, registered by Bicholim Police Station. The crime attracts sections 363 and 376 of IPC, besides sections 4, 6 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. Though the crime was registered on 24.07.2019, the applicant came to be arrested on 11.09.2019. He has been in judicial custody ever since his arrest. The police completed the investigation and filed the chargesheet in Sessions Case No.69/2019, pending before the District Judge, North Goa.

2. As the record shows, the victim girl was a minor at the material point of time. The prosecution alleges that the applicant, a married man aged 32, kidnapped the minor girl and sexually abused her. That resulted in pregnancy, which had to be medically terminated.

3. As to the victim's age, Shri Vibhav Amonkar, the learned counsel, for the applicant submits that there is no other evidence than her school leaving certificate from Karnataka to show the victim's age. In this context, he submits that though the age was said to be seventeen then, the very document was secured only after the crime was registered. Therefore, any amount of doubt can be cast on the authenticity of that

document. He wants the victim's age determined through a scientific method such as ossification or through an authentic birth certificate.

4. As to the allegation of kidnapping, Shri Amonkar submits that the victim girl and the applicant are in the neighbourhood. The victim girl voluntarily came over to the applicant, befriended him, and had consensual sex, not on one occasion but on many. That is the case even if we go by the prosecution version.

5. To elaborate his submissions, Shri Vibhav Amonkar also points out that she voluntarily went along with the applicant even to his native place. For that purpose, on her own, she made all preparations, including buying a burkha to cover her identity. All these aspects cumulatively show that the victim girl has never been kidnapped; nor has she been subjected to any forcible sexual intercourse.

6. Indeed, Shri Vibhav Amonkar draws my attention to the victim girl's statement under section 164 CrPC. According to him, her deposition reveals that she herself has gone over to the applicant's house; this is despite her repeatedly telling that she had sex against her will. For Shri Amonkar these two statements—going on her own but having forceful sex—do not go together. The fact remains that she went out to various places along with the applicant and, all along, it had been with no element of coercion.

7. Eventually, the learned counsel also submits that the applicant's wife has had cancer and that she needs his presence. At any rate, the applicant has already been in judicial custody for over one year three months, without any criminal antecedents. He wants Court's indulgence.

8. On the other hand, Shri Mahesh Amonkar, the learned Additional Public Prosecutor, vehemently opposes the bail. According to him, the applicant has exploited the minor girl. And that has resulted in an unwanted pregnancy, too. Though now the applicant pleads, rather unethically, that his wife has had cancer, in fact, this married man has even promised the minor girl that he would marry her. In the end, Shri

Mahesh Amonkar has submitted that crimes against minor girls ought to be viewed strictly, notwithstanding the alleged consent on their part.

9. Indeed, the victim is a minor, though the applicant disputes her age. *Prima facie*, if we go by the school leaving certificate, she was seventeen years then. In the same vein, I may observe that the applicant may not have kidnapped her but certainly has exploited her. That said, here, besides the severity of the crime, we may have to look at other factors as well.

10. Incarceration before a conviction is not punitive. Preconviction-incarceration is an exception rather than a rule. It is to safeguard the societal interest, and to that the judicial process is not stymied. The applicant has no criminal antecedents, and the police have already filed chargesheet. If at all the prosecution can bring home the guilt, the applicant will have his just deserts and serve the sentence. In anticipation, he may not be made to suffer as an undertrial once the Court can ensure that he does not jump the bail and abuse the process.

11. Under these circumstances, I 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.**

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