

IN THE HIGH COURT OF BOMBAY AT GOA
LD-VC-BA-44-2020

Mr Britto @ Ashwin Rodrigues
through next friend
Jise Rodrigues Applicant

V e r s u s

State of Goa and anr. Respondents

Mr Pavithran A. V., Advocate for the Applicant.
Mr G. Nagvekar, Additional Public Prosecutor of the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.
DATE: 22nd December 2020.

ORDER:

The applicant is the sole accused in Crime No.27 of 2018, registered by the Fatorda Police Station. It was on 14.03.2018. The offence attracts sections 376, 384 of IPC, r/w section 4 of the (POCSO) Act, besides sections 66-E, 67-A and 67-B of Information and Technology Act. Arrested on 14.03.2018, the applicant has been in judicial custody ever since.

2. To begin with, the victim's mother lodged a police complaint on 13.02.2018 against unknown persons because her minor daughter went missing. Again on 13.03.2018, the victim's mother filed another complaint, registered as Crime No.27 of 2018. It was against the applicant for the offences under sections 504 and 506 (ii) of IPC. Later, the police, on the investigation, seems to have added the provisions I mentioned above.

3. As per the prosecution version, the victim girl, then 16 years old, and the applicant, 24 years, made friendship online through FaceBook. That

virtual friendship soon blossomed into a real friendship. The victim girl seems to have disclosed her age as 18 years in her profile.

4. Now comes the disturbing part. Taking advantage of the friendship and proximity to the victim girl, the applicant is said to have sexually exploited her. Later, he allegedly went on calling the victim's father threatening that he would send the video clippings of his sexual intercourse with his daughter. To avoid that, he wanted the victim's family to pay him back the money, his cell phone, and ATM card the victim allegedly took from him.

5. There is also an additional allegation that the applicant, in fact, sent a video clipping to the complainant's sister, that is the victim's aunt, who in turn forwarded the clippings to the mother. During the investigation, the police seem to have secured the cell phone and retrieved the videos. In this context, Shri Pavithran, the learned counsel for the applicant submits that there is no video, not even photographs, depicting the victim girl in any vulgarity. According to him, section 4 of the POCSO Act does not apply to the crime because the victim herself, in her evidence, deposed that she deliberately kept her age as 18 in the profile. So there was no way for the applicant to know the victim's true age. As to the other provisions, according to him, the maximum punishment is five years. But, by now, the applicant has been in judicial custody for about two years nine months. Therefore, as the applicant has no criminal antecedents and as the trial, too,

has been underway in Sessions Case No.14/2018, before the Additional Sessions Judge. Therefore, Shri Pavithran urges this Court to enlarge the applicant on bail.

6. On the other hand, Shri Nagvekar, the learned Additional Public Prosecutor, strenuously opposes the bail. According to him, the allegations are disturbing. Besides, the victim is an unmarried minor girl. According to him, even if the victim girl falsely indicated that she was 18 years, that would not mitigate the crime, as ignorance could be no excuse. Section 4 of the POCSO Act does apply. Shri Nagvenkar has also read out from the report, dated 31.07.2018, of the Goa State Forensic Science Laboratory, Verna.

7. Though that report speaks about the retrieval of data, it is unclear whether that retrieved data could be accessed and played, to know the actual contents of the videos.

8. Indeed, the allegations are disturbing involving a minor girl. But the fact remains that the applicant, too, is a young unmarried man of 24 years. He had no prior acquaintance with the victim. They made friends online, and that has led to whatever I mentioned above. Without any criminal antecedents, the applicant has already been in custody for two years and nine months. The application of section 4 of (POCSO) Act is disputed; the rest of the provisions carry a maximum sentence of five years. As to the alleged videos, the applicant allegedly circulated to the victim's family, the forensic report speaks about the retrieval of data. But it is unclear whether

that retrieved data could be accessed and played, to know the actual contents of the videos. There is an element of doubt which ought to go in the applicant's favour.

9. Cumulatively viewed, any pre-conviction incarceration cannot be punitive. It has to serve a social objection of ensuing that the suspect does not jump bail, nor does he abuse the process.

10. Under these circumstances, I reckon it is a fit case for the Court to enlarge the applicant on bail subject to these conditions:

- (i) The applicant shall be released on bail on his furnishing of P. R. Bond for Rs.50,000/- (Rupees Fifty thousand only), with two solvent sureties for Rs.25,000/- each, out of which at least one surety shall be local. The bail bonds are to the satisfaction of the learned Additional Sessions Judge, Margao.
- (ii) The applicant should not leave the State of Goa, without prior permission of the Trial Court.
- (iii) The applicant shall attend the hearing of the case on the date fixed by the trial Court.
- (iv) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (v) The applicant's failure to abide by these conditions will entail prosecution to apply for the cancellation of bail now granted to the applicant.
- (vi) The Bail Application stands disposed of.

DAMA SESHADRI NAIDU, J.

AP/-