

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-BA-111-2020

Aurelio D'Sa, Presently in
Colvale Jail

...Applicant.

Versus

State of Goa and anr.

... Respondents

Shri Salil Saudagar, Advocate for the applicant.

Shri M. Amonkar, Addl. Public Prosecutor for the respondents.

Coram: - DAMA SESHADRI NAIDU, J.

Date: - 22 December 2020

PC.

The applicant is the sole accused in Crime No.219/20, registered by the Mapusa Police Station. Initially, the crime was registered under section 363 of IPC and section 8 of the Goa Children Act.

2. The prosecution's version is that the victim is a minor girl. Her mother complained to the police that the applicant, 20 years old, kidnapped her minor daughter from her lawful custody and had forceful sex with her.

3. The police could arrest the applicant on 22.8.2020. When they examined the victim, they dropped section 8 of the Goa Children Act but added section 376 of IPC and sections 4 and 8 of Protection of Children from Sexually Offences Act (POCSO Act). His efforts failing before the trial Court to secure regular bail, the applicant has come before this Court.

4. Shri Saudagar, the learned counsel for the applicant, submits that the applicant and the victim have been in love. There is not even a *prima facie* evidence on record that the applicant had kidnapped the victim and sexually exploited her. In fact, in her statement under Section 164 Cr PC, the victim has not even remotely referred to any sexual intercourse.

Besides, as part of the investigation, the police wanted to have the victim medically examined. But she refused. Her mother, too, withheld her consent. In this context, Shri Saudagar strenuously contends that none of the provisions gets attracted to the alleged crime.

5. On the other hand, Shri M. Amonkar, the learned Additional Public Prosecutor, reminds me that the crime involves a minor. Even if they were in love, his taking away the minor girl from lawful custody and exploiting her sexually cannot be condoned. Thus, he has opposed bail.

6. Heard Shri Salil Saudagar, the learned counsel, for the applicant and, Shri Mahesh Amonkar, the learned Additional Public Prosecutor, for the respondents.

7. As has been contended by the applicant's counsel, the victim is 17 years old and the applicant 20 years. They are said to be in love. True, a minor being in love is no mitigating factor under the POCSO Act. But, in her statement under Section 164 of Cr. PC, the victim has not referred to any instances of sexual exploitation; nor has she consented to a medical examination to have any scientific proof whether she has been violated.

8. That apart, the police have already completed the investigation and filed the chargesheet in Sessions Case (Others) No.33/2020, now pending before the Additional Sessions Judge, Mapusa. Given the age of the applicant and lack of criminal antecedents, I reckon it is a fit case for bail. This application is allowed subject to these conditions:

- (i) The applicant is directed to be released on bail on his executing P.R. Bond for ₹25,000/- each and on their furnishing two sureties each, for the like sum, to the satisfaction of the learned Additional Sessions Judge, Mapusa.
- (ii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge, Mapusa.
- (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.