

IN THE HIGH COURT OF BOMBAY AT GOA.

(LD-VC-BA-37/2020)

Nagaraj Chitragar & Jaison Applicant.

Vs

The State of Goa. Respondent.

Shri R. Desai, Advocate for the Applicant.

Shri P. Faldessai, Addl. Public Prosecutor for the respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date: 24th September 2020.

PC.

The applicant is the accused in Crime No.107/2019 for the alleged offence under Section 376 IPC, read with Sections 4, 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. After registering the crime, the Colva Police Station arrested the applicant on 10.10.2019. He has been in judicial custody since then.

2. Briefly stated, the applicant, aged 33 years, induced the victim girl, then aged 17 years 6 months, into an illegal intimacy with him.

3. The applicant earlier failed to secure a regular bail from the trial Court, which dismissed the application on 24.1.2020. Now, he has come to this Court under Section 439 of Cr.P.C.

4. Shri R. Desai, the learned counsel for the applicant, has submitted that the victim is the applicant's neighbour and has, with time, moved closely with him. But Shri Desai has stressed that the applicant has never

induced the victim even if we were to accept the entire allegations levelled against him. In this context, Shri Desai has drawn my attention to the victim's statement under Section 161 of Cr.P.C. and also the medical report dated 10.10.2019 issued by a competent psychiatrist.

5. After referring to these documents, Shri Desai has particularly pointed out that the victim has not suffered from any debilitating psychological or psychiatric disorders. The doctor himself has certified that the victim is calm, composed, and of assured behaviour. As to the alleged below-average intelligence, Shri Desai has argued that it cannot be treated as a disability.

6. Under these circumstances, he has urged this Court to enlarge the applicant on regular bail.

7. On the other hand, Shri P. Faldessai, the learned Additional Public Prosecutor, on his part has submitted that the victim was below 18 years old when the offence took place. So the POCSO Act visits the crime with all its vigour. He has also pointed out that the victim admittedly has below average IQ. In the end, Shri Faldessai has pointed out that the applicant is the victim's neighbour, and he may interfere with the witnesses or the process of trial. So he has urged this Court to dismiss the bail application.

8. Heard Shri R. Desai, the learned counsel for the applicant, and Shri P. Faldessai, the learned Additional Public Prosecutor for the respondent.

9. Indeed, there is no denying the fact that the victim was 17 years 6 months when the alleged offence took place. Both the victim and the applicant are neighbours. Prima facie, they have developed intimacy—however prohibited it is. From the victim’s statement, we may safely gather that there is neither inducement nor threat, leave alone coercion. That said, as the POCSO Act is a special enactment, it casts reverse onus on the accused; even consent will not dilute the severity of crime once it is established that the victim is a minor.

10. At this stage to grant a pre-conviction bail, the severity of the crime and the nature of the enactment under which the crime has been committed assume importance. But they alone cannot be the determining factors. Here, the police completed the investigation and filed charge-sheet. The applicant has been in judicial custody over one year. When the offence took place, admittedly the victim was 17 years 6 months—six months short of being a major. She seemed to have volunteered to be in the applicant’s company on more than one occasion. Besides, the applicant does not have any criminal antecedents.

11. It is also relevant to extract what a qualified psychiatric has to say in the medical certificate dated 18.11.2019 about the victim state of mind.

[N]o behavioural disturbances were reported. On mental status examination, she appeared calm, co-operative, rapport was established with ease. Her psychomotor activity was normal. Her attention was aroused, and her concentration was sustained. Her speech was relevant and coherent. There were no clinical features

suggestive of any major psychiatric illness. Her intelligence appeared below average.

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

ORDER

- (i) The application for bail is allowed.
- (ii) The applicant is directed to be released on bail on his executing P.R. Bond for Rs.50,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Additional Sessions Judge, Margao.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge, Margao.
- (iv) The applicant shall attend the hearing of the case on the date fixed by the trial Court.
- (v) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (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.

DAMA SESHADRI NAIDU, J.