

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 BAIL APPLICATION NO.1508 OF 2022

SANDIP DADARAO SHINGARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Deshmukh Himmatsinh D.
APP for Respondent-State : Mr. S. B. Narwade.
Advocate for Respondent No.2 : Mr. R. R. Khandebharad.

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CORAM : S. G. MEHARE, J.
DATE : 11.11.2022

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the victim.
2. It has been alleged against the applicant that he contacted the victim on the phone. He used to give her a message and call her at home. The applicant called the victim to his house, saying his parents wanted to talk to her about marriage. Believing him, the victim went to his house. However, his parents were not there. That time, he did forceful sex with her. When she started weeping, the applicant promised her to marry. Thereafter, under the pretext of marriage, he did sex with her. He often did sex with her. He also took indecent photographs on his mobile handset.

Meantime, her family started searching for a match for her. She told her parents about her relations with the applicant. Her parents went to his house. At that time, the applicant and his parents refused to marry her. Thereafter, she got married to another boy. After her marriage, the applicant called her at his home under the threat of spreading her indecent photographs. He was demanding sex to her. Under the threat she met him and said he should delete the photographs from his mobile. He demanded for sex for deleting the pictures. She agreed. However, the applicant did not delete the pictures and black mailed her. Lastly, the applicant crossed his boundaries and sent the indecent photographs to her husband on his mobile handset. When her husband learnt about the relationship, he drove her out from the house. In such a way, the applicant spoiled her life.

3. Learned counsel for the applicant has vehemently argued that initially no offence under the POCSO Act was registered. However, during the course of investigation, it was transpired that she was below 18 years. Therefore, the POCSO Act was added. He would also argue that it was a consensus sex. Therefore, it cannot be said that it was a forceful sex. The prosecution has no evidence of making indecent photographs

viral. But, it is the victim, who was not interested to cohabit with her husband. Hence, she opened created a fake account and on that fake account, she transmitted the photographs to her husband. Her sole intention was to get separated from her husband and re-marry the present applicant. The applicant is innocent and young. The material investigation is over. Hence, he may be released on bail.

4. Learned APP has strongly opposed the application. It has been argued by the prosecution that a serious offence punishable under Section 376, 354, 294, 506 read with Section 34 of the IPC as well as Section 4, 8 and 12 of the POCSO Act and Section 67 of the Information Technology Act have been committed by the applicant. The allegations levelled against the applicant are crystal clear that he exploited the victim under the false promise to marry her. She was a child at the time of having sex for the first in time. The applicant had no reason to deny for marriage. But his denial reveals that he was only interested to exploit her physically. It has also been argued that the consistent evidence of the victim supported with the other documents shows that the prosecution has a strong case against the applicant and he is likely to be convicted. Hence, he may not be granted bail.

5. Learned counsel appearing for the complainant who has filed an affidavit of complainant/victim would argue that now the applicant has promised to marry her. Since he has promised to marry her, she has no objection to release him on bail. He has referred to the affidavit of the victim girl.

6. The question is, “Can victim marry the applicant when her first marriage subsists?”. When the question is raised by the Court, it has been argued by the learned counsel for the applicant and victim that, “if the applicant would be released on bail then, victim would get divorce from her first husband and then they marry. Unless the marriage is dissolved, the applicant and victim cannot marry. In these circumstances, the consent of victim girl is immaterial. As far as the merit is concerned the Investigation Officer has collected the evidence of sexual exploitation under the pretext and promise of marriage. The victim was the child below the age of 18 years at the time of first sex with the applicant. Whether she had consensus sex is a matter of evidence before the trial Court. Apparently, the offence is serious. Not only this, the obscene photographs have also been transmitted to the husband of the victim that spoiled her life. Considering the gravity of the

offence, the facts of the case, this Court is not inclined to grant him bail. Hence, the application stands dismissed.

(S. G. MEHARE, J.)

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vmk/-