

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

**CRIMINAL APPLICATION NO. 3075 OF 2015**

Vishal Sanjay Pede

.... **APPLICANT**

**V E R S U S**

The State of Maharashtra

.... **RESPONDENT**

.....

Mr. Vijay Sharma h/f Mr. V.A.Bagdiya,  
Advocate for Applicant.

Mr. U.S.Mote, A.P.P. for Resp. – State.

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**CORAM : V.M.DESHPANDE, J.**

**DATE : 10<sup>th</sup> JULY, 2015**

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**PER COURT :**

1. Present Criminal Application is for grant of bail. Applicant is arrested in connection with Crime No. 04/2015 registered with Waluj police station, District Aurangabad for the offences punishable u/s 376 (2) (I), 363, 366 of the Indian Penal Code and u/s 3, 4, 6 and 8 of Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Vijay Sharma holding for Mr. V.A.Bagdiya, learned counsel for the applicant and Mr. U.S.Mote, learned A.P.P. for respondent – State in extenso.

3. At the out set, it is to be pointed out that the Investigating Officer has already completed his entire investigation and charge sheet is already filed in the Court of law.

4. On 18/01/2015, father of the prosecutrix lodged F.I.R. with police station, wherein it is asserted that the applicant used to visit his Kirana shop daily and tried to have a dialogue with the prosecutrix. It is further stated in the F.I.R. that on 17/01/2015 when the prosecutrix failed to return to her house, from the enquiry, it was suspected by the first informant that his daughter is taken away from his lawful custody by the applicant. Therefore, offence u/s 363,366 of the Indian Penal Code was registered against the applicant.

5. Prosecutrix returned to her house on 23/01/2015. On the said date, applicant was arrested.

6. Charge sheet would show that there are three statements of the prosecutrix. Her first statement was recorded on 23/01/2015. Said statement would reveal that the prosecutrix and the applicant were in love. However, they were knowing that since both belong to different caste, performance of their marriage is impossible and, therefore, they decided to run away from the house. According to the said statement, present applicant brought ATM card from his house and he has incurred expenses for visiting the holy place like Tirupati and others. Said statement shows that at Tirupati, they stayed in a common hall. Said statement shows

that from 17/01/2015 till 23/01/2015, the day when the prosecutrix returned to her house, at no point of time, present applicant has sexual intercourse with the prosecutrix.

Supplementary statement of the first informant is also recorded on 26/01/2015. In his statement also, he has reiterated the fact that it was disclosed to him by his daughter that there was sexual relations between her and the present applicant.

7. Then there is another statement recorded u/s 164 of the Code of Criminal Procedure. Said statement is recorded on 03/03/2015. In the said statement, for the first time, after the period of one and half months, prosecutrix claimed that there was sexual intercourse between her and the present applicant at Tirupati. However, she is very specific in the said statement that there was no sexual intercourse between her and the present applicant at Nagpur when they had been at Nagpur after visiting Tirupati. Her another statement is recorded on 07/03/2015, wherein she claim that there was sexual intercourse between her and the applicant at Nagpur also.

8. In so far as the age is concerned, charge sheet contains the school leaving certificate of the prosecutrix, which shows that her date of birth is 19/10/2001. Ossification test is also conducted on the prosecutrix and according to the Radiologist, her age is between 14-16 years. What is the exact age of the prosecutrix, will have to be established by the prosecution during the course of the trial.

9. In view of the radiology test, *prima facie*, it appears that the prosecutrix has attained the age of understanding. Further, her first disclosure clearly absolves the present applicant in respect of the sexual relations. Looking to these aspects and looking to the fact that the investigation is already over, applicant who is languishing in jail since 24/01/2015 can be released on bail on certain conditions. That leads me to pass the following order.

- (i) Present Criminal Application is hereby allowed.
- (ii) Applicant Vishal Sanjay Pede be released on bail in connection with Crime No. 04/2015 registered with Waluj police station, District Aurangabad for the offences punishable u/s 376 (2) (I), 363, 366 of the Indian Penal Code and u/s 3, 4, 6 and 8 of Protection of Children from Sexual Offences Act, 2012 on he executing P.R. Bond of Rs. 15,000/- [Rupees Fifteen Thousand] with one solvent surety of like amount. Bail before the trial Court.
- (iii) Present applicant shall attend Waluj police station once in a fortnight till the trial is over.

- (iv) Present applicant shall not cause to give any threat to the prosecutrix.
- (v) With these observations, present Criminal Application is disposed of.

**[V.M.DESHPANDE, J.]**