

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

CRIMINAL APPLICATION NO. 3227 OF 2015

Imran Salim Tamboli

.... **APPLICANT**

V E R S U S

The State of Maharashtra

.... **RESPONDENT**

.....

Mr. Joydeep Chatterji, Advocate for Applicant.

Mr. V.H.Dighe, A.P.P. for Resp. – State.

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CORAM : V.M.DESHPANDE, J.

DATE : 10th JULY, 2015

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PER COURT :

1. This is an application for grant of bail. Applicant is arrested in connection with Crime No. 29/2015 registered with Sangamner Taluka police station, District Ahmednagar for the offences punishable u/s 363,366 (A),376,212 of the Indian Penal Code and u/s 3 and 4 of Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Joydeep Chatterji, learned counsel for the applicant and Mr. V.H.Dighe, learned A.P.P. for respondent – State.

3. Investigating Officer has already completed entire investigation and charge sheet is filed on 25/02/2015 and since then he is in jail. Co-accused are already released on bail by trial court.

4. F.I.R. is lodged on 18/02/2015 by Swapnil Annasaheb Kawade, who is cousin of the prosecutrix. The sum and substance of the F.I.R. is that since 17/02/2015, prosecutrix was not available in her house nor in the village. It is also stated in the F.I.R. that they have suspicion that the applicant must have taken the prosecutrix with him.

5. Statement of the prosecutrix is available in the charge sheet. Prosecutrix returned to her house on 24/02/2015 and on 25/02/2015 her statement was recorded. From her statement, *prima facie* it appears that there was love affair between the present applicant and the prosecutrix. However, since both belong to different religion, it was impossible for them to get married and, therefore, they left the place. Statement of prosecutrix would show that the applicant and she took certain work in the Company and thereafter had a halt in the house of co-accused Kiran. According to her statement, there firstly the sexual relations were established with her by the applicant and also from the F.I.R. it appears that at Malegaon in a room which was taken on rent by the applicant, on second occasion sexual intercourse took place. From the statement of the prosecutrix at least *prima facie* it is clear that sexual intercourse was not forceful.

6. According to prosecution, date of birth of the prosecutrix is 15/06/1998. Thus, on the date of incident, her age was 16 years and 8 months. As per the ossification test, her age is between 15-17 years. During the course of trial, it is obligatory on the part of the prosecution to prove the exact age of the prosecutrix. However, from the material available in the charge sheet, *prima facie* one can reach to the conclusion that the prosecutrix has attained the age of understanding. Applicant is in jail since 25/02/2015. Further, in view of filing of the charge sheet, his further custodial presence in the jail is not warranted. That leads me to pass the following order.

- (i) Present Criminal Application is hereby allowed.
- (ii) Applicant Imran Salim Tamboli be released on bail in connection with Crime No. 29/2015 registered with Sangamner Taluka police station, District Ahmednagar for the offences punishable u/s 363,366 (A),376,212 of the Indian Penal Code and u/s 3 and 4 of Protection of Children from Sexual Offences Act, 2012 on he executing P.R. Bond of Rs. 10,000/- [Rupees Ten Thousand] with one solvent surety of like amount. Bail before the trial Court.
- (iii) Present applicant shall not try to contact

the prosecutrix nor shall in any way prejudice the prosecution case.

- (iv) With these observations, Present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]

KNP/Cr.Apln. 3227.2015