

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

CRIMINAL APPLICATION NO. 4219 OF 2015

Bhagwan s/o Dhondiba Dorkhe
R/o. Ranjangaon, Tq. Badnapur,
Dist. Jalna.

...Applicant

versus

The State of Maharashtra

...Respondent

.....
Mrs. S.P. Kakade, Advocate h/f Mr. P.B. Kakade, Advocate for
applicant
Mrs. B.B. Gunjal, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 20th AUGUST, 2015

ORAL ORDER :

This is an application for grant of regular bail in an offence registered with Police Station, M.I.D.C. Waluj, Taluka and District Aurangabad bearing Crime No. I-19/2014 on 17/01/2014, punishable under Sections 366(A), 376(I), 109 of the Indian Penal Code and under Sections 3(A), 4, 5(2)(J)(1) (6) and 17 of Protection of Children from Sexual Offences Act.

2. The prosecutrix Yasmin was alleged to be of 14 years by her mother, who has lodged the complaint on 17/01/2014 against the applicant of enticing her and entering into the sexual relation with the said minor girl. The father and brother of the applicant /accused were

also shown to be accused, however, are released on bail.

3. Learned Counsel for the applicant, while praying for regular bail, would urge that the investigation in the present matter is complete and charge sheet is already filed. He has invited my attention to the report issued by the Department of Radiology, Government College, Aurangabad whereby the age of Yasmin Kalim Shaikh is certified to be between 16 to 17 years which is radiological bone age.

4. Learned Counsel for the applicant would urge that under Muslim Law, if any girl attains the age of puberty, she has every right to marry as per her choice. In support, she has placed reliance on paragraph-4 of the judgment of Delhi High Court delivered in Writ Petition (CRL) No. 446 of 2012, Cri. M.A. No. 3701 of 2012 decided on 09/05/2012 between Mrs. Tahra Begum vs. State of Delhi & ors. Apart from above, she has also relied upon the order of this Court dated 12/11/2014 passed in Criminal Application No. 5810 of 2014 wherein according to her, under the similar set of circumstances, the accused was released on bail.

5. Learned A.P.P., while countering the above referred submissions, has invited my attention to the conduct of the applicant

as is reflected in the investigation papers. She would urge that from the record, date of birth of Yasmin was recorded as 17/10/1999 and as such, on the date of commission of offence, the said girl was minor. According to learned A.P.P., in view of investigation is carried out, there appears *prima facie* case as against the applicant and as such, the application be rejected.

6. Having considered the rival submissions made by learned Counsel for the respective parties, it is noticed that Department of Radiology has certified radiological bone age of Yasmin to be between 16 to 17 years. Admittedly, the said girl is Muslim by religion and it is not the case of prosecution that the girl was converted to other religion.

7. It is also required to be noted that the prosecutrix in her statement has narrated that out of her love for applicant, she has married with the applicant and out of the said marriage, she has sexual relations with the applicant on various places before the arrest of the applicant. The applicant has voluntarily appeared before the police.

8. In the above background, in my opinion, it will be appropriate to grant the bail.

The applicant herein be released on bail, upon his furnishing P.R. Bond of Rs.10,000/- (Rs. Ten thousand) with one surety in the like amount in connection with the Crime No. I-19/2014, registered at Police Station, MIDC Waluj, Taluka and District Aurangabad, under Section 366(A), 376(I), 109 of the Indian Penal Code and under Section 3(A), 4,5(2),(J)(1)(6) and 17 of Protection of Children from Sexual Offences Act.

9. Criminal Application stands allowed in above terms.

[N.W. SAMBRE, J.]