

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 5243 OF 2015

Govind @ Avinash s/o Maroti Kamble

APPLICANT

V E R S U S

- 1 The State of Maharashtra
- 2 The Police Sub-Inspector, Police
 Station Vimantal Nanded, District
 Nanded

RESPONDENTS

Ms. M.R. Jamdhade, Advocate for Applicant

Mr. S.M. Ganachari, APP for Respondents/State

CORAM : INDIRA K. JAIN, J.

DATE : 18th November, 2015

PER COURT :

. Heard Ms. M.R. Jamdhade, learned counsel for Applicant and
Mr. S.M. Ganachari, learned A.P.P. for Respondent/State. Perused police
papers.

2. Applicant is involved in Crime No. 20 of 2015 registered at Vimantal Police Station, District Nanded for the offences under Sections 363, 366 (A), 376, 376 (2)(N) of the Indian Penal Code and under Sections 5 and 6 of the Protection of Children from Sexual Offences Act.

3. Prosecution case in brief is as under:-

- i. On 24.01.2015 Rekhabai Rode mother of the victim lodged report alleging therein that her 15 years old daughter was kidnapped by Applicant and she was missing from the home. On the basis of report crime was registered and it was revealed that Accused has taken away the prosecutrix from the lawful guardianship of her mother under the promise of marriage and committed sexual intercourse with her.
- ii. It is the contention of Applicant that prosecutrix was in love with the Applicant and both have performed marriage. A reference was made to

the statement of prosecutrix recorded by the learned Judicial Magistrate First Class on 18th June, 2015 in which she stated that she had willingly married to the Applicant.

4 The crux of the dispute at this stage revolves round the age of prosecutrix. If she is found under age her consent would be immaterial. Investigating Agency could collect School Certificate of the prosecutrix during the course of investigation. It shows date of birth of prosecutrix as 01.02.2000. Incident occurred on 30.10.2014. School Certificate shows prosecutrix was under age at the time of occurrence of incident.

5 Learned counsel for Applicant vehemently contended that as per radiological report age of prosecutrix was between 18 and 20 years and the radiological opinion would prevail while considering the age of prosecutrix. The submission though attractive does not find force in view of availability of date of birth of victim in school record. Ultimately it would be a matter of appreciation of evidence during trial and it would be too early to comment which of the two would prevail. Fact remains that date of birth of prosecutrix in school record shows that she was minor.

6 In the light of the above and considering the seriousness of offences alleged against the Applicant, manner of incident and *modus operendi* of Applicant this Court does not find it fit to exercise judicial discretion. Hence the following order -

O R D E R

Criminal Application No. 5243 of 2015 stands rejected.

(INDIRA K. JAIN, J.)