

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 416 OF 2015

Vaibhav Bhaskar Kole	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Kuldeep U. Nikam, Advocate for the applicant.
Mr. D.P. Adsule, APP for the State.

CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 25th March, 2015.

P.C.

This Application is moved for bail. This is a second Bail Application. The first Bail Application was allowed to be withdrawn on 5th November, 2014. However, in the said order, this Court has mentioned that "it is clarified that the request for withdrawal was made without making any submissions on merits". Therefore, there is no question of entertaining the Application on the change of circumstances.

2. The applicant/accused is charged for the offences punishable under sections 363, 366A, 376 of the Indian Penal Code and sections 5 and 6 of Protection of Children from Sexual Offences Act, 2012. As per the case of the prosecution, the prosecutrix, who was 15 years and 6 months old, was kidnapped by the applicant/accused, who was residing in the same vicinity. The applicant/accused had threatened the minor

brother of the complainant. He took the victim out of the custody of her guardian on 23rd March, 2014 and then she was found on 3rd April, 2014 at different place. During this period, the applicant/accused had sexually abused her and had intercourse on her. The mother of the prosecutrix earlier lodged complaint on 25th March, 2015 and then her supplementary statement was recorded.

3. The learned counsel for the applicant/accused has submitted that the prosecutrix has eloped with the applicant/accused, as they were in love with each other. The applicant/accused is 21 years old and he want to marry her. The learned counsel submitted that there was no force used by the applicant/accused when she left the house of her parents and went alongwith the applicant/accused. The learned counsel submitted that considering the age of the applicant/accused, he is to be released on bail. The applicant/accused is taken in custody on 4th April, 2014 and he is in prison since last one year. He is ready to abide to all the conditions imposed by this Court. In support of his submissions, he relied on the similar facts decision in Criminal Bail Application No. 182 of 2014 dated 5th March, 2014 and in Criminal Bail Application No. 159 of 2014 dated 11th February, 2014.

4. The learned APP opposed the Bail Application and submitted that

the prosecutrix was minor, i.e. below the age of 16 years and, therefore, her consent is immaterial. The applicant/accused is facing the charges of rape on the minor and therefore, he is not to be granted bail.

5. It is to be noted that the Investigating officer is not present on any date of hearing of this Application. Though the prosecutrix was 15 years and 6 months and she was studying in X Std., therefore, it is to be taken into account that she has attained the age of understanding. I also rely on the judgment of the Apex Court in the case of **S. Varadarajan vs. State of Madras, reported in AIR 1965 SC 942**. In support of the ratio laid down in **S. Varadarajan** (*supra*) and considering the age of the applicant/accused and the period from which he is in prison, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

ORDER

- (i) The Application is allowed.
- (ii) The applicant/accused is released on bail on furnishing P.R. Bond in a sum of Rs.15,000/- with one or two sureties in the like amount.
- (iii) The applicant/accused shall not pressurize the witnesses and shall not keep any contact with the victim.
- (iv) The applicant/accused shall make himself available and

attend all the Court dates.

(v) The applicant/accused shall not abscond and furnish his permanent address to the police along with address proof.

(vi) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

(vii) The applicant/accused shall not leave India without the prior permission of the Court.

6. The Application stands disposed of on above terms.

(MRS. MRIDULA BHATKAR, J.)