

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1272 OF 2015

Ritesh Ghanshyam Rohidas. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. K.S. Labana i/b. Mr. Mohd. Umar Kazi, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 11, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 19/7/2013 in Crime No. 109 of 2013 registered at Shivaji Nagar Police Station for offence punishable under Section 364(A), 363 and 376 read with Section 34 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 6/7/2013 one Bachavlal Chauhan lodged a report at the police station alleging therein that on 4/7/2013 his children had been to Barkupada to attend Satsang. That his children had not returned home. He enquired with his son namely Sikandar. Upon enquiry he learnt that his daughter Suman had left her cell phone with Pooja and had left satsang and her brothers and sisters were searching for her. On 5/7/2013 he had received a phone call from the cell phone of his daughter Suman. The phone call was received by his daughter Soni. The caller had informed her that Suman is in his custody. There was a repeated call. That there was demand of Rs. 15,000/- for releasing Suman from his custody. On the basis of the said report, Crime was registered against unknown persons.

4 The supplementary statement was recorded on 6/7/2013, wherein the complainant had specifically alleged that the person who was speaking on the cell phone was the present applicant. On

19/7/2013 the applicant and Suman were apprehended at Surjanpur and were brought to Mumbai.

5 On 21/7/2013 statement of Suman was recorded. She disclosed that on 4/7/2013 she had been to attend satsang. The present applicant had also attended satsang. She was acquainted with him. He told her that they should get married. She refused the proposal. Upon that the applicant is alleged to have told her that she should not continue to leave with her father in view of the fact that she is being harassed by him. That according to the victim, the complainant had forced her to accompany him. They had been to railway station and took the train to U.P. On 7/7/2013, they had got married in a temple by exchanging garland. That the applicant had allegedly obtained signature of the victim on stamp paper. Thereafter, they resided in his native place till 19/7/2013.

6 Date of birth of the victim is 12/7/1997. At the time of incident, she was more than 16 years of age. The applicant had allegedly demanded Rs. 15,000/- for her release.

7 Prima facie the statement of the victim does not inspire confidence, in as much as the brother and sisters of the victim were alongwith her. She had handed over the cell phone to one of her sister and had left the spot without telling them where she was going. The story that a phone call was received on cell phone of victim Suman demanding a ransom from Suman cannot be believed. The learned APP submits that the caller must have knowledge that the cell phone of Suman is with her father and on these premises applicant is being prosecuted under Section 364A of the Indian Penal Code.

8 Prima facie it appears that the victim girl had voluntarily accompanied the applicant. The investigation is completed and charge-sheet is filed. There is no material in the compilation of the charge-sheet to even prima facie substantiate that a demand of ransom was made on the cell phone. As far as Section 376 of the Indian Penal Code is concerned, it cannot be believed that she was ravished by the applicant, since she had happily stayed at the native village of the applicant.

9 The learned APP submits that since the victim had not completed 18 years of age, her consent cannot be taken into consideration.

10 However, in view of the observations of the Hon'ble Apex Court in the case of **S. Varadrajan v/s. State of Madras (1965 SC 942)**, wherein the Hon'ble Apex Court held as follows :

“It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the

formation of the intention of the minor to leave the house of the guardian.”

11 In view of the above observations and the fact that the applicant is in jail since 19/7/2013 and the charge is not framed till today, the applicant deserves grant of bail.

12 The abovesaid observations are prima facie in nature and are restricted to decide the application under section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The learned Trial Court shall decide the same on its own merits in accordance with law uninfluenced by the above observations.

13 Hence, following order is passed :

ORDER

(i) The application is allowed.

- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.
- (iii) The applicant shall report to the police station on 1st Sunday of every month between 10 a.m. to 1 p.m. till conclusion of the trial.
- (iv) The applicant shall also remain present on each and every date of trial.
- (v) Upon being enlarged on bail, the applicant shall furnish his permanent address, landline number, cell phone number to the investigating officer.
- (vi) Upon failure to attend any two consecutive dates either at police station or at the time of trial, the prosecution shall be at liberty to file an application for cancellation of bail.

14 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)