

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1535 OF 2015**

Ashok Kanhu Retawade

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Prakash Naik i/b Ms. Gauri Jadhav for the Applicant

Mr. S. S. Pednekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 28TH SEPTEMBER, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 42 of 2015 registered with the Khed Police Station, Pune, for the alleged offences punishable under Sections 376, 363, 366(A) r/w 34 of the Indian Penal Code and under Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act.

3. The complainant is the father of the prosecutrix who has lodged the aforesaid FIR on 10th February, 2015. According to the

complainant, his daughter (prosecutrix) left home for attending Science Practicals and did not return thereafter. He has alleged that at about 9:30 a.m, he received a message from the mobile phone of his daughter stating that there is an emergency and she needs help. In view of the said SMS received by the complainant, the complainant lodged a case of kidnapping as against unknown persons.

4. Learned Counsel for the applicant submits that the prosecutrix who was aged 16 years 11 months at the relevant time, went on her own accord with the applicant, who was about 20 years. He submitted that the statement of the prosecutrix will show that the applicant had taken her to various places and that he had even purchased Mangalsutra for her and that they had stayed with him in various lodges. He submitted that the statement of the prosecutrix which is recorded under Section 164 of Cr.P.C shows that the applicant had called the complainant and had asked him whether he would get him married to the prosecutrix. Pursuant to which, the complainant had asked the applicant to return home, after which he would get them married. He submitted that the statement of the friend of the applicant also shows that the applicant had gone to her house along

with the prosecutrix and that they had stayed there. According to the learned Counsel for the applicant, both the applicant and the prosecutrix stayed at various lodges, however, no complaint or hue and cry was raised by the prosecutrix. He submitted that the applicant has been in custody since 25th April, 2015 and as charge-sheet is also filed, the applicant be enlarged on bail.

5. Learned A.P.P submits that the statement of the prosecutrix shows that she was forcibly taken and that the applicant had committed forcible sexual intercourse with her.

6. Perused the charge-sheet, in particular, the statement of the prosecutrix and the witnesses. Although the prosecutrix has alleged that the applicant had forcible physical relations with her, it appears that the applicant and the prosecutrix were known to each other for quite sometime and the possibility of the prosecutrix going on her own accord with the applicant cannot be ruled out in the facts. However, considering the prosecutrix's age, her consent would be immaterial.

7. Considering the nature of allegations and the fact that the investigation is complete and charge-sheet is filed, the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the Khed Police Station on every Sunday between 10:00 a.m. to 11:00 a.m. for a period of four months from the date of his release and thereafter on the first Sunday of every month between 10:00 a.m. to 11:00 a.m, till the conclusion of the trial;
- (iii) The applicant shall not tamper or attempt to influence or contact the prosecutrix, complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or

change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.

CERTIFICATE

Certified to be true and correct copy of the original signed
order.
