

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2283 OF 2014

Vishnu Ramchandra Karande

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. S. J. Lavate for Applicant

Mr. D. P. Adsule APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 20, 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 24/05/2014 in crime no. 198 of 2014 registered at Sangvi Police Station, Pune. Applicant herein is charge-sheeted for offence punishable under section 363, 366, 376 of Indian Penal Code and section 3 r/w section 4, 7 & 8 of Protection of Children from Sexual Offences Act, 2012.

2) It is the case of prosecution that one Lalita Hipparkar lodged a report at the police station alleging therein that her daughter had gone for a computer class on 19/04/2014 and since then, she had not returned. According to the

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complainant, her daughter was kidnapped by present applicant on the assurance of getting married. On 24/05/2014, missing girl was found in the company of the applicant at Sangola, District Solapur. Initially, complaint was lodged under section 363 of Indian Penal Code. Statement of the daughter of the complainant was recorded on 24/05/2014. She has disclosed to the police that on 19/04/2014, present applicant had forced her to board an auto-rickshaw and had taken her from one place to another. That he had got married to her. They had travelled from one place to another. They had also resided in the house of relatives of the applicant.

3) Learned counsel for the applicant submits that in fact, it is a love affair. Daughter of the complainant was in love with the present applicant and they had eloped. Although, she had several opportunities to call upon her parents, she has made no efforts to do so.

4) Learned APP submits that girl is a minor. She is just 15 years old.

5) Learned counsel for the applicant has relied upon the Judgment of the

Hon'ble Apex Court in the case of **S. Varadrajan v/s. State of Madras (1965 SC 942) regarding the mental ability to understand the consequences of her act.** 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.”

6) It is true that daughter of the complainant was less than 16 years old, however, upon perusal of papers of investigation, it prima facie appears that the daughter of the complainant had voluntarily eloped with the applicant. Investigation is completed and charge-sheet is filed. Applicant has been in jail since 24/05/2014. Applicant has therefore, made out prima facie case for grant of bail.

ORDER

- (i) Application is allowed.
- (ii) 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.

Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)