

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2491 OF 2014

Jaywant Ananta Pawar	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. Kuldeep Patil, Advocate for the Applicant.
Mrs. A.A. Mane, APP for the State.

CORAM : P.D. KODE, J.

DATE : JANUARY 12, 2015

P.C.

. By this application the applicant/accused charge-sheeted by Murbad police station, Thane for the commission of offences punishable under Sections 376(2)(h), 363 and 366(A) of Indian Penal Code and Section 3(w)(i) of the SC ST (Prevention of Atrocities) Act, 1989 and Sections 4 and 8 of the Protection of Child from Sexual Harassment Act, 2012 has prayed for bail.

2. The applicant is accordingly charge-sheeted by the said police station as a result of

the investigation of C.R. No.80 of 2014 registered with the said police station upon F.I.R. lodged by father of the victim girl on 19-06-2014 initially for commission of offences punishable under Sections 363 and 366(A) of Indian Penal Code and Section 3(1)(i) of the SC ST (Prevention of Atrocities) Act,1989. The said F.I.R. was lodged mainly on the allegations that first informant was of *Aadivasi* community while applicant was of *Maratha* community. The applicant used to visit the Ashram school at which the victim girl of aged 13 years was studying and on the pretext of marriage, he has kidnapped her out of the guardianship/keeping of the first informant. During the course of investigation and particularly after medical examination of the victim girl and recording of her statement, police has ultimately charge-sheeted the applicant for commission of the offences narrated hereinabove.

3. The prayer for bail is opposed by the

learned APP mainly on the count of material collected revealing that minor girl was sexually exploited by the applicant while learned counsel for the applicant has pressed the same by making certain submissions.

4. Since it is settled legal position by the plethora decision of Apex Court that medical evidence supporting to the claim of victim being not a *sine qua* requirement, the submission of the learned counsel that in the instant case the medical evidence does not support the claim of the victim can not be said to be a good ground for considering the prayer for bail. On the contrary, even perusal of the said medical certificate reveals that the hymen of the victim girl was found to be torn. The learned counsel for the applicant submitted that the medical report reveals that it was an old injury. The facts and circumstances reveals that after the victim girl had eloped with the applicant, she returned back to the house of

the parents after about 10 days. Since in medical terminology '*Fresh*' term indicates it being within 24 hours before the examination of the victim, merely because Doctor has written old, does not indicate that it belies the claim of the victim.

5. The learned counsel nextly contended that statement of the girl reveals that the victim girl was having love affair with the applicant and therefore the applicant can not be said to have been committed offence punishable under Section 363 or 366(A) of Indian Penal Code. It is contended that the matters in the said statement considered in the proper perceptive leads to the conclusion of the victim girl having left/abandoned the custody of her father. It is difficult to accept the said submission considering the age of the victim girl being 13 years and the fact that the material in the statement *prima facie* revealing that the applicant has taken her away.

6. The learned counsel for the applicant nextly contended that the statement dated 19-06-2014 and the statement dated 20-06-2014 does not reveal that the applicant had established physical relations with the victim girl. The learned counsel contended that even though the statement dated 23-06-2014 reveals such allegations, the absence of such material in the earlier two statements leads to *prima facie* conclusion of the same being thrust in the mouth of victim girl by the police for implicating the applicant. The *prima facie* perusal of the earlier two statements reveals that the same were recorded by male police officer while last one was recorded by a female police officer and then no question about such relations was asked. Having regard to it, it is difficult to accept the criticism canvassed as it is well known that a minor girl of such age would be reluctant to make such disclosure to male police officer while recording her earlier statements.

7. Thus, considering the material collected during the course of investigation and the nature of the offence committed, it is difficult to accede with the prayer for bail on the admission given by an immature girl of there being love affair between herself and the applicant. Needless to add that considering her age and it being imperceivable to have sexual relationship with a girl of aged below 18 years and *prima facie* there exists material of the applicant having committed such offence by taking advantage of immaturity of a minor girl, there appears no merits in the application. Hence, application stands disposed of.

8. All the observations aforesaid being primarily made for determining merits in the prayer for bail, the same may not be considered by the trial Court as final opinion expressed by the Court relating to the merits of the prosecution case.

(P.D. KODE, J.)