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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1064 OF 2016

Pandurang s/o Diliprao Sodgir ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr M.V. Salunke, Advocate for applicant;
Mr S.J. Salgare, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd March, 2016

ORDER :

By the present application under section under section 439 of the Code of Criminal Procedure, the applicant – a student, aged about 21 years, seeks his release on bail, in connection with C.R. No.254 of 2015, registered with police station, Gangakhed, for offences punishable under sections 363, 366-A, 376 of the Indian Penal Code and under sections 11 and 12 of the Protection of Children from Sexual Offences Act.

2. The first information report is lodged by one Amol, brother of victim Kajal, who was at the time of the incident aged about 17 years and 3 months and was taking education in 12th standard. Initially the complainant brother Amol lodged a missing report on 15th September, 2015 and the statement of the victim, for the first time, came to be recorded on 17th September, 2015. In the said statement she claimed that she had

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voluntarily left her parental house as her mother was consistently pursuing her to study hard, which pressure she could not sustain.

3. On 26th October, 2015, supplementary statement of victim came to be recorded, in which for the first time, she has come out with a case of love affair with the present applicant and leaving the house and accompanying the applicant herein on 17th September, 2015 and thereafter having sexual intercourse.

4. The statement of the victim, pursuant to the provisions of section 164 of the Code of Criminal Procedure came to be recorded on 15th December, 2015, wherein she claimed that she got married to the present applicant with the help of the people from his village, however, thereafter she was subjected to cruelty by the father of the applicant on account of not paying the dowry and driven out of the house.

5. In the above referred background, the applicant came to be arrested on 23rd October, 2015.

6. While trying to make out a case for grant of bail, learned Counsel appearing on behalf of the applicant would urge that having regard to the above referred background, narration of the incident and improvement in the story of the prosecution from time to time and changing stance by the victim, the applicant's implication in the crime in question is false. He would then submit that the investigation in the matter is complete and

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charge-sheet is also filed and as such, further detention of the applicant is not necessary. He claims that the applicant is a student and there are no criminal antecedents.

7. The application is opposed by the learned Addl. Public Prosecutor on the ground that even if the story narrated in the first information report is taken to be true and there is consent by the victim for sexual intercourse, it is required to be noted that the victim was below 18 years of age and, therefore, her consent was of hardly any consequence. He would then urge that the evidence collected during the investigation depicts *prima facie* involvement of the applicant and sought rejection of the application.

8. With the assistance of the respective Counsel, I have perused the charge-sheet. The medical evidence confirms about sexual intercourse, however, the examination of the victim appears to have been carried out after more than one month of her disappearance. Apart therefrom, it is required to be noted as stated in the beginning paragraph about the narrations which are given by the victim and change thereof from time to time for implicating the applicant in the crime in question.

9. It appears from the record that there was love affair between the applicant and victim.

10. In the light of foregoing reasons and having regard to the fact that the investigation in the matter is complete and charge-sheet is also filed,

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in my opinion, it will be appropriate to enlarge the applicant on bail. I, therefore, pass following order :-

The applicant be released on bail, in connection with C.R. No.254 of 2015, registered with police station, Gangakhed, for offences punishable under sections 363, 366-A, 376 of the Indian Penal Code and under sections 11 and 12 of the Protection of Children from Sexual Offences Act, on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

Till conclusion of the trial, the applicant shall not enter town Gangakhed.

The applicant shall not tamper with the prosecution evidence.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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