

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

CRIMINAL APPLICATION NO. 5230 OF 2016

Kishor s/o. Atmaram Nakhate .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.Avinash S. Khedkar, Advocate for the applicant.
Mr.S.P. Sonpawale, APP for respondent/State.

**CORAM : A.M. BADAR,J.
DATED : 13.10.2016**

P.C. :-

1. The applicant/accused in Crime No.26 of 2016 registered with Dharur Police Station, Dist. Beed, for the offences punishable under sections 376-A of the Indian Penal Code, under sections 4,6 of the Protection of Children from Sexual Offences Act, 2012 and under section 3 (1)(11), 3 (1)(12) and 3(2) (5) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act), is seeking his release on bail, after filing of charge-sheet.

2. Heard learned Counsel appearing for the applicant/accused. He argued that the prosecutrix was of the age of understanding and she was knowing fully well that she became pregnant. For this purpose statement of

Dr.Dharmpal Toshniwal is relied by learned Counsel for the applicant. Learned Counsel further argued that the applicant is falsely implicated in the crime in question and there is no direct evidence in respect of commission of the offence. Reliance is placed on judgment of this Court in the case of Sunil Mahadev Patil Vs. The State of Maharashtra, 2015 SCC OnLine Bom 6204 as well as orders of this Court in Criminal Application No.182 of 2014 (Suraj Kumar Patil Vs. State of Maharashtra) passed on 05.03.2014 at Bombay as well as order dated 21.09.2016 in Criminal Application No. 5089 of 2016 (Ansiram s/o. Bhanudas Kale Vs. State of Maharashtra). Relying on these orders, it is argued that even the applicant is a young person and keeping him behind the bar is unjustified.

3. Learned A.P.P. opposed the application by contending that the prosecutrix was not of consenting age. She has delivered a male child because of the incident in question.

4. I have carefully considered the rival submissions and perused the charge-sheet. So far as direct evidence in such offence is concerned, far back in the year in 1983 in the matter of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753, it is

held by the Hon'ble Apex Court that in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury.

5. The F.I.R. of the crime in question is lodged by the prosecutrix after delivery of a male child and after detection of abandonment of newly born child. According to the prosecutrix, she is of 16 years of age. On the pretext of marrying her the prosecutrix alleged that the applicant had committed repeated sexual intercourse with her which has resulted in making her pregnant. The prosecutrix further reported that on 30.03.2016 she delivered a male child in the public lavatory of Municipal Council, Dharur and had abandoned a child. Subsequently, she started bleeding and there was talk in the locality that a new born child found and taken to hospital. Then the prosecutrix lodged report after disclosing her relatives that a child is delivered by her.

6. Perusal of the certificate issued by the middle school of Zilla Parishad shows that date of birth of the prosecutrix is 15.02.2000. This shows that the prosecutrix was a minor at the time of the incident and as such was incapable of giving consent. The charge-

sheet discloses that the prosecutrix has given birth to a male child.

7. In sexual offences testimony of the victim of offence is relevant and the victim of such offence is considered as an injured witness rather than an accomplice. The prosecutrix is a minor and the offence falls under sections 376 (2) (i) & (j) of the Indian Penal Code and punishment prescribed is imprisonment for life which shall mean imprisonment for the remainder of that person's natural life. The nature of the crime and the penalty which it invokes is a consideration while granting bail. Therefore, though in the matter of Suraj Kumar Patil (Supra), the accused who was a student of Engineer and had topped first year Engineering Course was released on bail, I do not find this case to be a fit for granting bail particularly when the prosecutrix herein belongs to a Scheduled Caste. In the case of Suraj Kumar Patil (Supra), father of the prosecutrix was uncle of the applicant and the father of the prosecutrix had filed an application before the Trial Court stating that the applicant be released on bail, considering his educational career. Such is not the case in hand.

8. In the matter of Sunil Mahadev Patil (Supra), guidelines are given while considering such application

for grant of bail. Those guidelines are relevant when a boy and minor girl in love choses to live together without consent of their parents. Such is not the case in hand.

9. In this view of the matter, no case for bail is made out. The application is rejected.

[A.M. BADAR,J.]