

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6266 OF 2016

1] Atul S/o Babruwan Kamble,
Age : 22 years, Occu. : Labour,

2] Amir S/o Chandsab Shaikh,
Age : 19 years, Occu.: Labour,

Both R/o Daithana, Tq. Shirur (A),
Dist. Latur

.. Applicants

Vs.

1] The State of Maharashtra

2] The Investigation Officer,
Police Station Udgir (Rural)
Dist. Latur

.. Respondent

Mr. D.R. Jayabhar, Advocate h/f Mr. L.S. Shaikh, Advocate
for the applicants

Mr. S.N. Morampalle, APP for the respondent/State

CORAM : A.S. CHANDURKAR, J.

DATE : 16/12/2016

ORAL ORDER :

Heard.

2. The applicants, who have been arrested on 13/2/2016 are seeking their release on bail in connection with Crime no.186 of 2015 registered with Udgir (Rural) Police Station, Tq. Udgir, Dist. Latur for

the offences punishable under Sections 363, 366-A, 376(I)(J)(N), 504, 506 of the Indian Penal Code and under Sections 4, 5, 6, 7 and 14 of the Protection of Children from Sexual Offences Act.

3. According to the FIR lodged by father of two girls namely, Shilpa and Kalpana, both the daughters were found missing prior to about 1-1/2 months. During the course of investigation, both the girls were traced on 13/2/2016 alongwith the present applicants after which the applicants came to be arrested. Thereafter, offences under the Protection of Children from Sexual Offences Act as well Sections 376(1)(J)(N), 504, 506 of the Indian Penal Code came to be registered.

4. It is submitted by learned counsel for the applicants that there was love affair between the present applicants and the two sisters. Both the sisters had come alongwith them on their own accord without any enticement. Referring to the statements of the two sisters recorded on 13/2/2016, it is submitted that this fact is fortified therein. Relying upon the

judgment of learned Single Judge of this Court in the case of **Sunil Mahadev Patil Vs. The State of Maharashtra** (Criminal Application No.1036 of 2015 decided on 3rd August, 2015), it is submitted that considering the observations made therein and as both the girls had accompanied the applicants on their own accord, the applicants deserve to be released on bail. It is also submitted that the chargesheet has now been filed on 10/5/2016 and hence further detention of the applicants is not warranted.

5. Application is opposed by learned Additional Public Prosecutor by relying upon the police papers. It is submitted that age of both the girls is found to be below 18 years and hence, offences under the Protection of Children from Sexual Offences Act have been made out. It is submitted that considering the material on record, involvement of the applicants is apparent and, therefore, the Application deserves to be rejected.

6. I have perused the chargesheet filed in the

present case. Statements of both the sisters recorded on 13/2/2016 indicate that they were having a love affair with the applicants since more than a year and they had, on their own accord, left the parental house and had accompanied the present applicants. They had stayed together for almost 5 months after which they came to be arrested. Their statements do not indicate that they were residing with the applicants against their will.

7. In **Sunil Mahadeo Patil** (supra), learned Single Judge of this Court has considered a somewhat similar offence wherein the prosecutrix aged about 15 years was having a love affair with the applicant therein. It was observed that as the prosecutrix had accompanied the applicant therein as she was in love with him after which they resided together, same was considered as a mitigating factor. In the present case also, the situation is somewhat similar where both the girls had accompanied the present applicants on their own accord. Considering the fact that the prosecutrix in the present case were consenting parties and were not under any

coercion or influence coupled with the fact that chargesheet has been filed on 10/5/2016, no useful purpose would be served by continuing the detention of the applicants behind the bars. They have remained behind bars for almost 10 months.

8. In view of aforesaid, the following order :-

ORDER

I) The applicants, who have been arrested in Crime no.186 of 2015 registered with Udgir (Rural) Police Station, Tq. Udgir, Dist. Latur for the offences punishable under Sections 363, 366-A, 376(I)(J)(N), 504, 506 of the Indian Penal Code and under Sections 4, 5, 6, 7 and 14 of the Protection of Children from Sexual Offences Act, are directed to be released on bail, upon each of them furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

II) They shall attend the Court of learned Sessions Judge, Udgir on 9th January, 2017 and thereafter as per the directions of the learned Sessions Judge.

III) They shall not take any steps to influence the prosecution witnesses.

9. By clarifying that the observations made in this order are only for deciding the bail Application, the same is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/