

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 727 OF 2016**

Mangesh Hiranman Mohite

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Priyal G. Sarda for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent-State

PSI Mr. A. N. Lonikar from Vadgaon Maval Police Station, is present

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 26th APRIL, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 156 of 2015 registered with the Vadgaon Maval Police Station, Solapur, for the alleged offences punishable under Sections 363, 366(A), 376 of the Indian Penal Code ('IPC') and under Section 4 of the Protection of Children from Sexual Offences ('POCSO') Act, 2012.

3. On 2nd June, 2015, the prosecutrix, aged 17 years 2 months left home saying that she was going for a Beauty Parlour Class, however, she did not return home. The family members took search of the prosecutrix, however, as she could not be found, they lodged a complaint on 6th June, 2015 as against unknown person alleging an offence punishable under Section 363 of the IPC. Subsequently, the prosecutrix was traced on the basis of her mobile number on 22nd July, 2015, to the house of the present applicant and his co-accused wife. On inquiry, it was disclosed by the prosecutrix that the applicant had performed marriage with her against her wishes at Alandi and had taken her to Pawannagar and thereafter had physical relations with her against her wish. Pursuant thereto, the other offences came to be added.

4. Learned Counsel for the applicant submits that the applicant and his wife, who is accused No. 2 were residing in the same area initially where the prosecutrix was residing. He submitted that thereafter, due to some dispute between the applicant and the prosecutrix's mother, the applicant and his wife shifted to Navlakh Umbre which is about 10 kms

from where the prosecutrix was residing. He submitted that the prosecutrix had gone on her own accord with the applicant and his wife. He submitted that the allegation that the applicant and his wife took the prosecutrix to Alandi and that the applicant and the prosecutrix's marriage was performed before a Brahmin, is not supported by any material or evidence to that effect. He submitted that on the contrary, the CDR record shows that there were almost 11 calls that were exchanged between the prosecutrix and her sister between 2nd June, 2015 and 10th June, 2015. He submits that the same has not been disclosed either by the prosecutrix or by the sister in their statements. He submitted that the medical evidence shows that there were no external injuries found on the prosecutrix and that the tear was old. He submitted that even the statements of the neighbours, where the prosecutrix was allegedly confined, does not show that the prosecutrix was confined. According to him, the spot panchnama shows that the tenement of the applicant and his wife was a one room tenement, which had a window and therefore, the fact that the prosecutrix was confined, is baseless. He submits that the co-accused, applicant's wife has been enlarged on bail.

5. Learned A.P.P submits that on 2nd June, 2015 when the prosecutrix went missing, the accused No. 2 had called the prosecutrix. However, learned A.P.P is unable to point out why the calls were exchanged from 2nd June, 2015 to 10th June, 2015 between the prosecutrix and her sister. She submits that the 164 statement of the prosecutrix has been recorded, which shows that the applicant had cheated her and had taken her to Alandi and performed marriage with her with the help of accused No. 2 and thereafter, the applicant had physical relations with her, at the behest of the applicant's wife i.e. accused No. 2. According to the prosecutrix, in the two months that she was with the applicant, the applicant had physical relations with her on 2 to 3 occasions.

6. Perused the papers. The accused No. 2, who is the wife of the applicant has been enlarged on bail. *Prima facie*, the allegation that the applicant had performed marriage with the prosecutrix is not supported by any witness or the Brahmin, who performed their marriage. The calls between the prosecutrix and her sister between the said period i.e. 2nd June, 2015 and 10th June, 2015 are unexplained. The injury certificate of the

prosecutrix shows that there were multiple old healed tears which were present and there was no other external injuries. Investigation is complete and charge-sheet is filed. It also appears that the applicant is residing at Navlakh Umbre and the prosecutrix is residing at Kanhe Phata, Taluka Maval, District Pune, which is about 10 kms away. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) The applicant, during the pendency of the trial, shall not enter the jurisdiction of Kanhe Phata, where the prosecutrix is residing;

(iv) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The applicant to cooperate with the conduct of the trial;

(vii) The applicant to file an undertaking with regard to Clause Nos. (ii) to (vi), in the trial Court, within one week of his release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.