

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.943 OF 2016

Mr. Shekhar Shashikant Bhopate	..Applicant
V/s.	
The State of Maharashtra	.. Respondent

Mr. P.G. Chavan a/w Mr. Manish P. Gitay for the applicant.
Mrs. Veera Shinde APP for Respondent-State.

CORAM : A.M. BADAR, J.

DATE : 07th JUNE, 2016.

P.C.

1. Applicants/accused in Crime No.87/2016 for the offence punishable under section 376 of the Indian Penal Code and under sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 registered with Umbraj Police Station, by this application is praying for pre-arrest bail.

2. Heard learned counsel appearing for the applicant. By taking me through the FIR lodged by the alleged victim of the crime, he argued that there is inordinate delay in lodging the FIR. The learned counsel further argued that the tone and tenure of the FIR goes to show that the sexual act was consensual and there was a love affair.

between the alleged victim and the applicant. He further argued that considering the averments in the FIR and the allegations about penetrative sexual assault, custodial interrogation of the applicant after a lapse of so many years is not at all warranted.

3. The learned APP opposed the application by contending that at the time of alleged act, the prosecutrix was not of consenting age and as such her consent is irrelevant. She further contended that as the applicant is involved in heinous sexual offences, he is not entitled for bail. The learned APP further argued that date of birth of the victim girl is 16-04-1997 and as such she was definitely a minor at the time of the alleged offence. Statement of the victim girl is already recorded under section 164 of the Cr.P.C.

4. The prosecution case as reflected from the FIR lodged by the victim girl goes to show that she as well as the applicant both were student in the year 2014 and had developed love relations and thereafter they started roaming at various places. The FIR reflects that in the month of August 2014 they both indulged in sexual intercourse at village Gopuj. The FIR further shows that in November 2014, the prosecutrix as well as the applicant had sexual intercourse at house of the prosecutrix. According to the

prosecution case elders from the family had arranged meeting wherein it was decided that the prosecutrix as well as the applicant should marry. It has happened in the year 2014. Then according to the prosecution case, engagement ceremony of the prosecutrix with the applicant took place on 14-11-2014. Elders from the family of the applicant attended that ceremony. However, as the prosecutrix was below 18 years of age, date of marriage could not be fixed. Then according to the prosecution case on completion of 18 years of age by the prosecutrix, elders in her family insisted for marriage of the prosecutrix with the applicant. However, family members of the applicant started to give evasive replies. Ultimately, the FIR in question came to be lodged on 21-04-2016.

5. It is seen from the papers of the investigation that alleged acts took place in the year 2014 and those were consequential to blooming love affairs between prosecutrix as well as the applicant. The matter proceeded upto engagement ceremony but ultimately marriage could not took place.

6. As the alleged offence took place in the year 2014, nothing is to be recovered from the present applicant. Considering the fact that the informant as well as the applicant were college

going students when the incident took place, liberty of the applicant needs to be protected particularly considering the nature of allegations against him. His per-trial detention is not at all warranted considering the nature of prosecution case, hence order:-

ORDER

- (i) The application is allowed.
- (ii) In the event of his arrest in Crime No.87/2016 for the offences punishable under section 376 of Indian Penal Code and under sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Umbraj, District-Satara, applicant/accused be released on bail on executing PR bond in the sum of Rs.25,000/- and on furnishing one or two sureties in the like amount.
- (iii) Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;
- (iv) Applicant/ accused shall co-operate in expeditious disposal of the trial against him.

- (v) Applicant/ accused shall attend Investigating Officer on every Saturday in between 11.00 am to 1.00 pm for the period of one month and he should co-operate the Investigating Officer;
- (vi) Application is accordingly disposed of.

(A.M. BADAR, J.)